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CURRENT EVENTS.

THE PARDONING POWER.—"The quality of mercy is not strained," but its application to unworthy objects is often very much strained to the detriment of public interests and the shame of public justice. We had occasion some time ago to refer to the abuses incident to the exercise of the pardoning power, and now return to the subject apropos of a recent article in the New York *Nation*, commenting on the efforts now being made in behalf of Jacob Sharpe, recently convicted of a very serious offense.

The *gravamen* of the plea for mercy made by his sympathizers is, not that he acknowledges the justice of his conviction, that he is penitent, that he committed the crime under the pressure of sudden and irresistible temptation, or under any of the manifold forms of "extenuating circumstances;" but simply and purely that he is old (not poor) and in feeble health.

As the *Nation* very properly remarks, he was old and in feeble health when he committed the effense of which he has been, with so much difficulty, convicted. A man of his years can hardly be expected to be very robust, but it is not reasonable that the infirmities of advanced age should preclude the expiation of crime.

Common humanity requires that prisoners, old or young, who are suffering with bodily disease, should be treated kindly and leniently, and receive every attention that their condition may require; beyond this, except in cases in which an early death may be expected, the sick convict has no greater claim upon the public than the healthy convict.

For the rest, the case seems to be singularly destitute of extenuating circumstances. Sharpe was a veteran, an adapt in the peculiar line of intrigue which culminated in the crime of which he was convicted. He fought the battle of law with vigor and pertinacity, and when it has been fairly lost it would be a mere "child's bargain" for the people of New York to forego the fruits of their victory and put to open shame all their pretensions to the due and equal administration of justice. With every disposition to be charitable, we can not perceive the slightest *scintilla* of a reason why the law should not be permitted to take its course.

There are, however, many cases, very different from this, which address themselves very strongly to the charity and sympathy of all good men and women. When a convict is young, ignorant, ill-nurtured, inexperienced, misled by wicked associates, overpowered by temptations beyond his power to rerist, and thus falls into crime, he is a suitable object for the active and kindly sympathy of the charitable, and of earnest efforts to secure his reformation; but it is a matter of common observation that offenders of this class receive scant attention from the general public. Its sympathy is bestowed upon culprits of a very different description. The red-handed murderer, the fashionable forger, the defaulter, if by any chance he has stumbled on his route to Canada, and generally whosoever has been the principal figure in a *cause celebre*, is the recipient of the morbid and maudlin commisseration which it is the fashion to bestow upon criminals. For him the hot-house grows its choicest bouquets, reporters crowd his levees and fill columns of the papers with his remarks, his portraits embellish every variety of publication, and silly and gushing sympathizers besiege the governor with petitions for his pardon.

And in just such cases the abuses of the pardoning power and the perversion of gubernatorial clemency most frequently occur. The obscure culprit, convicted of crime in some out-lying county, is not the style of person in whose behalf the misapplication of mercy is made. He takes his chances and usually suffers the penalty of his crime; it is the metropolitan offender, whose case fills newspapers, that excites the compassion and enlists the sympathy of those who, in the language of the last century, would be called "the quality," ladies of fashion and men of mark, and to secure their interest it is only necessary that, howsoever wicked he may be, and perhaps for their purposes the wickeder the better, he shall be *famous*, the sensation of the hour. These people remind us of the kind, but weak, old Scotch minister who, after praying

for the human family generally and specially for everybody individually, that he could think of, concluded his petition with a prayer for the devil. "And noo, my brethren," he said, "let us pray for the puir auld de'il; naebody prays for the puir auld de'il." To all such we would say, we admire your benevolence, but a fig for your judgment.

NOTES OF RECENT DECISIONS.

MASTER AND SERVANT—LIABILITY OF FORMER FOR UNDUE VIOLENCE BY LATTER—EVIDENCE RES GESTÆ.—The Supreme Court of the United States, in a recent case,[1] found it expedient and necessary to state at some length and with great clearness and precision the principles of law controlling the liability of a master for the unnecessary violence used by a servant when acting within the scope of his duty. There is not much novelty in the doctrines applied, but the elegance and lucidity of Mr. Justice Harlan's opinion entitle it to special consideration.

The facts were that Brockett was a deck passenger on a steamboat plying between Albany and New York, commencing his voyage at the former city. In the course of his trip he went "abaft the shaft," which deck passengers were forbidden to do, and was removed with wholly unnecessary violence to his appropriate quarters. He was beaten, his shoulder dislocated and permanent injuries were inflicted upon him. Thereupon he sued the corporation which owned the steamboat, recovered a judgment for $5,500 and this judgment was affirmed by the Supreme Court of the United States. It was conceded, in the opinion of the court, that the regulation prohibiting deck passengers from going "abaft the shaft" was reasonable, that Brockett had violated the rule, and that the officers of the boat had a right to remove him, but in doing so they could lawfully use no unneeessary violence.

The court held that, although the plaintiff *had* violated the rules of the boat and *was* in a place in which he had no right to be, he did not thereby forfeit the rights to protection which he had acquired by his contract for his passage. The only effect was to render him liable to be removed, without unnecessary violence, to his proper quarters, or, if necessary, to be put ashore. On the subject of the contract of passage, and the consequent duties and liabilities of the carrier, Mr. Justice Herlan says:

"The plaintiff was entitled, in virtue of that contract, to protection against the misconduct or negligence of the carrier's servants. Their misconduct or negligence while transacting the company's business, and when acting within the general scope of their employment, is of necessity to be imputed to the corporation which constituted them agents for the performance of its contract with the passenger. Whether the act of the servant be one of omission or commission, whether negligent or fraudulent, 'if,' as was adjudged in Philadelphia & R. R. Co. v. Derby,[2] 'it be done in the course of his employment, the master is liable; and it makes no difference that the master did not authorize or even know of the servant's act or neglect, or even if he disapproved or forbade it, he is equally liable if the act be done in the course of his servant's employment.'[3] 'This rule,' the court of appeals of New York well says, 'is founded upon public policy and convenience. Every person is bound to use due care in the conduct of his business. If his business is committed tc an agent or servant, the obligation is not changed.'[4] The principle is peculiarly applicable as between carriers and passengers; for, as held by the same court in Stewart v. Brooklyn & C. R. Co.,[5] a common carrier is bound, as far as practicable, to protect its passengers, while being conveyed, from violence committed by strangers and co-passengers, and undertakes absolutely to protect them against the misconduct of its own servants engaged in executing the contract."

A question was made in this case involving the admissibility in evidence of declarations made by a servant of the corporation while assisting in removing the plaintiff to the proper place for him to stay. The language used by this person was very abusive and approbious, and the court held that it was

[1] New Jersey, etc. Co. v. Brockett, 7 S. C. Rep. 1039.

[2] 14 How. 486.

[3] See also Philadelphia, etc. Co. v. Quigley, 21 How. 210.

[4] Higgins v. Watervliet, etc. Co., 46 N. Y. 27.

[5] 90 N. Y. 591.

properly given to the jury as part of the *res gestæ* and as illustrating the *animus* of the eviction proceeding.[6]

[6] Vicksburg, etc. Co. v. O'Brien, 119; U. S. 99, 105; s. c., 7 S. C. Rep. 118; Ohio, etc. Co. v. Porter, 92 Ill. 439; Toledo, etc. Co. v. Goddard, 25 Ind. 190, 191.

AT WHAT TIME DOES THE RELATION OF CARRIER AND PASSENGER BEGIN?

In a former paper,[1] the question as to who are to be considered "passengers" in the law of carriers of persons was considered. A further question, viz., At what period the relation of carrier and passenger commences, and how long it is to be inferred as continuing, is equally important and interesting.

A decision both recent and from a court of high authority, furnishes a convenient text for this discussion. In Merrill v. Eastern Railroad Co.,[2] decided by the Supreme Judicial Court of Massachusetts in 1885, the facts were these: The plaintiff's intestate had been traveling upon the engine but got off at East Salisbury, a station where the train stopped, and after the conductor had called out, "All aboard," and the train had started, ran and got upon the front platform of the front passenger car. The train was crowded, but there was no evidence that it would have been impossible for the deceased to reach the inside of the car, and there was testimony that he could have done so, and that he was asked by the brakeman to get out of the way so that the latter could do his work, but retorted that he had been on this road twenty years, and knew more about railroads than the brakeman did. The deceased stood upon the step of the platform facing inward, and after the train had gone from a quarter to half a mile, fell off and was killed. In half a mile the train had reached a speed of thirty miles an hour, and, according to some of the witnesses, it was swaying violently when the deceased fell. The track was straight. Three defenses were apparently set up by the carrier. 1st. That the deceased had been guilty of contributory negligence. 2d. That there was no evidence of negligence on the part of the carrier. 3d. That the deceased was not a "passenger." The first and second of these defenses were certainly, on the facts, a sufficient answer to the action. But the court, while agreeing that the second point is well taken, and intimating that the first is likewise, rests its decision mainly on the third. "But," says Holmes, J. "we do not pass upon this point (viz., defense No. 1) because we cannot assume that the deceased had acquired the rights of a passenger. He did not do so when he got upon the engine, a place to which he was not invited, and which everyone knows is not intended for passengers, and where, in this case, he would have escaped paying fare, as it was inaccessible to the conductor. Then, supposing that his start upon the engine did not give a character to his subsequent relation to the defendant,[3] and that the deceased was in the same position as if he had attempted to get on at East Salisbury for the first time, it is clear that when he attempted to get upon the moving train after it had started, he was outside of any implied invitation on the part of the defendant, and did not at once acquire the rights of a passenger in the hands of a carrier. We may admit that if he had reached a place of safety and seated himself inside the car, the bailment of his person to the defendant would have been accomplished, so that he would not have been prevented from asserting such rights because of his improper way of getting upon the train. But we think that he could not assert them until he had passed the danger which met him on the threshold, and had put himself in the proper place for the carriage of passengers."

This conclusion is certainly at variance with other adjudications on what constitutes a "passenger," and will remain one of those anomalous and confusing judicial judgment —always too many and yearly increasing— which beset the student and make the endeavor to reduce the rules of law to scientific principles utterly discouraging. The deceased was none the less a passenger, because he was on the engine, unless he was there by stealth or by collusion with the engineer or other servant of the carrier with in-

[1] *Ante*, vol. 24, p. 219.
[2] 139 Mass. 238.
[3] Swan v. Manchester & Lawrence R. Co., 132 Mass. 116, 120; s. c., 42 Am. Rep. 432.

tent to defraud the carrier;[4] he was none the less a "passenger," because he had changed his position on the train, either at the moment of leaving the engine, during the time he was going from the engine to the car, or at the moment he boarded the car.[5] He could lose none of his rights by boarding the train while in motion; the carrier assents to this every day, in the case of travel by rail, and will be presumed to so assent where he has taken no precaution—as by gates or guards—to prevent a passenger from entering a car after it has started. And, lastly, the adjudged cases will show that one is a "passenger" as much from the moment when he is on the threshold of the journey, or the very steps of the vehicle, as from the time when he is finally and comfortably ensconced in the carriage and settled for the journey.

The relation of carrier and passenger may commence before he pays his fare or enters the vehicle.[6] In an English case, the plaintiff held up his finger to the driver of an omnibus who stopped to take him up, and just as he was putting his foot on the step of the omnibus the driver drove on and he fell on his face to the ground. The court held that he was a passenger.[7] In Cleveland v. New Jersey Steam-boat Co.,[8] the plaintiff went on board one of the defendants boats at New York to take passage to A. He stood in front of the gangway opening inside the bulwarks but outside of the main part of the boat. Defendant had provided means and appliances sufficient to protect the gangway, *i. e.*, a gate supported by stauchions with a top rail, etc. The top bar of the gate projected at each end, which, when the gate was in place, rested in iron staples, sufficient to hold the gate in place unless it was broken. The mate had put the gate in place, and as the boat started was in the act of taking the stauchions and top rail to put them in their proper places, when a person on board in attempting to jump ashore fell into the water. This caused a rush of passengers to the side, who pushed plaintiff against the gate—one end of this had been lifted out of the staples by some unauthorized person. The gate gave way and plaintiff fell overboard and was injured. It was held that he was a passenger. "He was there" said the court "in the character and relation of a passenger" though he had not paid his fare or procured a ticket.

In McDonough v. Metropolitan R. Co.,[9] the plaintiff, a boy of thirteen, sued for injuries received while getting on a street car. His testimony tended to show that when he saw the car coming he, with another boy, left the sidewalk, where they had been waiting, crossed the street, and stood by the side of the track; that the car stopped less than two car-lenghts from the place of the accident, and started with a tow-horse attached; that the grade was rising; that the horses started on a walk, and at the time the plaintiff attempted to get upon the platform were just begining to trot, or going at a slow trot; that when the car approached the plaintiff he signaled the driver to stop; that the driver saw him and turned to speak to the tow-boy, who was on the front platform on the opposite side of the car from the plaintiff; that the plaintiff's companion got upon the front platform; that as the plaintiff was getting upon it with one foot upon the step and holding to the railing with both hands, the driver and the tow-boy started up the horses, giving the car a jerk by which the plaintiff's foot was thrown off the step, and after being dragged a few feet, he fell, receiving the injuries complained of. There was no rule or notice prohibiting the getting on the front platform of the car when in motion. The boy was held to be a passenger, the court saying: "The length of time he had been upon the car and his position upon it and the fact that he was changing his position and had not assumed his seat or taken his stand upon the platform are immaterial. *He was on the car and being carried by it on his journey.*" And as to his act in getting on the front platform while the car was in motion, as an act of contributory negligence—not it will be observed as affecting the question whether or not he was a passenger—the court say: "It does not appear that the act was prohibited by the defendant. There is nothing in the case to show that the defendant did not invite its passengers to enter the

[4] Wilton v. Middlesex R. Co., 107 Mass. 108.

[5] Jeffersonville, etc. R. Co. v. Riley, 39 Ind. 568; State v. Grand Trunk R. Co., 58 Me. 176; Northrup v. R. Co., 43 N. Y. 517; Ormand v. Hayes, 60 Tex. 180.

[6] Davis v. Chicago, etc. R. Co., 10 How. Pr. 330; Central R. Co. v. Perry, 58 Ga. 461; Smith v. R. Co., 32 Minn. 1.

[7] Brien v. Bennett, 8 C. & P. 724.

[8] 68 N. Y. 306.

[9] 137 Mass. 210.

cars by the front as well as by the rear platform, there was no rule or notice prohibiting it. The platforms were alike fitted for such use, and as matter of common knowledge were both used for that purpose and both occupied by passengers; and the jury might well have found that the public were invited to use both. There was no evidence that passengers were not permitted, and impliedly invited, to get upon the cars when in motion; and such invitation might be implied if cars were commonly used in that way without objection, or if such use were consistent with due care. It is unnecessary to consider what inference in this respect the jury might have drawn, because we think that upon the whole evidence the question of the plaintiff's case was for the jury. It is obvious that the mere fact of getting upon the front platform of a horse car when in motion is not in the common judgment of men, inconsistent with due care. It would not strike the common mind as necessary to stop a car whenever a conductor or a policeman stepped upon the front platform. There is not as in the case of steam cars, any commonly recognized rule of prudent conduct, forbidding the act, but the question of due care must be determined by the circumstances and manner of the act, and is a question for the jury, except in those cases, where the facts established by undisputed testimony leave no reasonable question. If any facts which may be found by a jury upon the evidence would present a reasonable question whether the plaintiff was not in the exercise of due care, the facts must be passed on by the jury, and the question answered by them."

So he is a passenger while waiting in the depot or waiting room for the coach or train to arrive.[10] In Illinois, in an action against a railroad company for an injury caused by the negligence of its servants, it is no defense that plaintiff entered the train before it was ready for passengers, defendants' servants having notified plaintiff that the train was ready.[11]

In Buffett v. Troy Railroad Co.,[12] a railroad company authorized by its charter to construct and operate a railroad between L and the State line at P, had constructed and was operating such road. On the line of the road was a station S, distant about a mile from the village of S. The railroad company hired one D, for a daily compensation, to run stages between the village and the station, carrying passengers to and from the railroad, D was supplied by the company with, and sold railroad tickets from S station to the various points on the railroad, generally when passengers arrived at the station, though sometimes they were on the stage. The plaintiff, intending to proceed to S by the railroad, got on board D's stage at S village, and by his direction took his seat on the outside, the inside being full. On its way to the station the stage was negligently overturned and the plaintiff seriously injured. He had at the time bought no railroad ticket. In an action against the railroad, it was held that it was proper for the jury to find that the plaintiff was, at the time of receiving the injury, a passenger of the defendants. Said Hunt, C. J.: "The stage was a part of the transporting arrangements of the defendants in connection with their railroad. That was its sole purpose. It was one link in the chain of passenger carriage between the village of Schaghticoke and the other towns on the line of defendants' road. It is no doubt the law that one taking his seat in a railroad car, for transportation, becomes a passenger, entitled to full protection in his rights as such from the starting of the car, although he had not purchased a ticket or paid his fare. He is bound to pay whenever called upon by the collector, and, taking his seat, thus to be transported and of a promise to pay the legal demand therefor.[13] It is no answer to this to say that he has not formally announced to the company that he wished to become such passenger, or that he has not stated to what point he wished to be carried. This information may be communicated to the company when the call is made by the collector for the fare; and his continuance in the conveyance is evident that he certainly wishes to go further than he has gone, when he is thus called upon. It is also evidence of his promise to pay for such further transportation. The plaintiff's position was the same as if he had been in the railroad car of the defendants. He was in the conveyance pro-

[10] Sordan v. R. Co., 40 Barb. 546; Alexander v. R. Co., 37 Iowa, 264. But see Indiana Cent. R. Co. v. Martin, 13 Ind. 325.

[11] Hannibal, etc. R. Co. v. Martin, 11 Ill. App. 386.

[12] 40 N. Y. 168.

[13] 22 N. Y. 307; 15 N. Y. 444.

vided by the defendants, in connection with their cars, and by which a journey from the village of Schaghticoke to the city of Troy might be completed. This was the purpose for which he startnd, as he testified without objection. I think these facts justified a submission to the jury of the question whether the plaintiff had become a passenger with the defendants under an agreement for transportation, and that the verdict of the jury on that question cannot be assailed."

JOHN D. LAWSON,

Avondale, N. J.

BAILMENT—INNKEEPER—LIABILITY.

MURRAY V. MARSHALL.

Supreme Court of Colorado, February 18, 1887.

An innkeeper is liable as bailee for want of ordinary care for the property of a guest who had left the hotel without the intention of returning, but nevertheless returned within two days and left with the clerk of the hotel his valise, which was subsequently lost. The loss of the valise under these circumstances was held to create a presumption of negligence against the innkeeper.

The evidence shows that on the night of the 25th of October, 1880, Marshall, the defendant in error, registered at the McClure House, in Canon city, of which Murray, the plaintiff in error, was proprietor. He registered his name, and was assigned to a room by the clerk, to which he retired, taking his valise with him. The next morning (the 26th) he came down to the office of the hotel, and handed his valise to the clerk, telling him that he would call for it. The clerk took the valise, and put it behind the counter. On the morning of the 28th, he returned to the hotel, paid his bill, and demanded his valise. It could not be found. The value of the valise and its contents amounted, in the aggregate, to $47.45, for which sum the court below gave judgment. To reverse this judgment, plaintiff in error sued out this writ.

ELBERT, J., delivered the opinion of the court:

An innkeeper is bound to take extraordinary care. His responsibility approximates to insurance whenever the thing brought to the inn has been confided, expressly or by application, to his keeping. Schouler, Bailm. 262. No question is made respecting the liability of the innkeeper as stated, but counsel insist that the liability of Murray, the plaintiff in error, ceased when Marshall, the defendant in error, left his hotel, leaving his valise in his care; that thereafter he was a bailee without compensation, and liable only for gross negligence.

It is said generally that, after the relation of guest ceases, the innkeeper appears liable only as an ordinary bailee, gratuitous or otherwise, for the inanimate goods his departing guest may have left in his care, unless strict proof be furnished of a different understanding. Schouler, Bailm. 270, and cases cited. Mr. Wharton, in his work on the Law of Negligence (section 687,) says: "It is an interesting question how long, when a guest leaves his baggage with an innkeeper, the innkeeper is liable, as innkeeper, for such. Judging from the analogy obtaining as to common carriers, we would conclude that the exceptional and onerous insurance liability of the innkeeper would not continue after the guest has permanently left the inn, allowing, of course, for a few hours which may be necessary for porters to effect a removal." At the same time he cites "as not without weight" the case of Adams v. Clem, 41 Ga. 67. In the case cited the guest departed from the inn, leaving her trunk in the possession of the innkeeper, with his consent, to be called for. Upon the following Friday the trunk was called for, but the plaintiff in error had lost it in the meantime, and could not deliver it, nor could he show any diligence in taking care of it. Brown, C. J., says: "We think, in such case, that an innkeeper, with whom the baggage of his guest is left, with his consent, though he gets no additional compensation for taking care of it, is still liable for it as innkeeper, for a reasonable time, to be estimated according to the circumstances of the case, after which he would be only a bailee without hire, and liable as such. We are not prepared to say that the time was unreasonable which intervened in this case before the guest sent for her baggage." The doctrine of this case seems to rest largely upon the fact that the baggage of the guest was left "with the consent" of the innkeeper; that from his acts, under the circumstances of the case, a contract is to be implied by which the innkeeper consents to continue his liability as innkeeper for a reasonable time. The case of Giles v. Fauntleroy, 13 Md. 138, is an authority for saying that the profit which the innkeeper derives from the entertainment of the guests affords a consideration for an undertaking in some respects similar. The court say: "The baggage was that of a guest, who, after paying his bill, was entitled to the use of his room for the whole day. The agent of the landlord undertook to keep the trunk until 4 o'clock, and then send it to a particular steamer. And such an undertaking, it seems, was consistent with what a traveling guest had a right to expect, in accordance with the rules and usage of the house. Conveniences and facilities held out to travelers are matters which influence them in selecting hotels for their accommodation, and the profit which innkeepers derive from the entertainment of their guests afford considerations for such undertakings as the one here alleged."

Departing guests not infrequently leave baggage in care of the innkeeper for a few hours or a few days, to be called for or to be forwarded to some designated destination. The great increase of modern travel creates an increased demand for

more extensive accommodations in this respect. With a view of influencing travelers in selecting their hotels, innkeepers, more or less, generally respond to this demand, and provide increased accommodations, and assume voluntarily duties respecting the baggage of guests thus left in their charge. In such case, if the liability of the innkeeper is that of bailee without compensation, guests are left with little or no protection. The cases cited show a tendency to enlarge it.

In the case at bar, the defendant in error left on the morning of the 26th, and returned on the morning of the 28th, an absence of about forty-eight hours. While it appears from his testimony that he did not, at the time, expect to return to the hotel as a guest, it also appears that he did not pay his bill upon departing from the hotel, but left it unpaid until the morning of the 28th, when he returned to get his valise. He paid his bill, but the plaintiff in error was unable to deliver or account for his valise. Under the facts, we think he should be held liable. The baggage was left with his consent, and the time was not unreasonable. In addition to this, for the unsettled bill of the defendant in error the law gave the plaintiff in error a lien upon the baggage left in his care. Whether the baggage was left and retained with such a view does not affirmatively appear, nor is it necessary to the lien that it should. We must treat the baggage as having that *status* which the law assigns it in the absence of anything showing that the plaintiff in error waived his right to the lien. His lien as an innkeeper would seem to involve a concession of his liability as an innkeeper, since the law gives the lien on account of his extraordinary liability. Grinnell v. Cook, 3 Hill, 485. If the fact that the defendant in error had departed without any intention of returning in the character of guest can be said to affect this proposition, then the *status* of the plaintiff in error was that of a bailee holding property upon which he had a lien as security for a sum due. In this character he was bound to ordinary diligence and ordinary care, and upon the demand of the baggage by the defendant in error it was not sufficient to say that it had been lost, or that he supposed it had been carried off by some drummer. The loss, under such circumstances, is *prima facie* evidence of negligence, and it lays with the pawnee to destroy the presumption. 2 Kent, Comm. 581; Schouler, Bailm. 192; Murray v. Clarke, 2 Daly, 102.

The judgment of the court below is affirmed.

NOTE.—The relation of innkeeper and guest must exist to render the former liable as an insurer for the baggage of the latter. "But it is not necessary to its existence that the owner of the goods should be actually *infra hospitum* at the time the loss happened or the lien accrued. For example, if a traveler leave his horse at the inn, and then go out to dine or lodge with a friend, he does not thereby cease to be a guest, and the rights and liabilities of the parties remain the same as though the traveler had not left the inn."[1]

After a guest has announced his intention to depart and settled his bill, the relation of guest and innkeeper would seem to continue for a reasonable time, determined by the circumstances of the case, to allow for a removal of his baggage.[2] The practical difficulty is, of course, to apply this reasonable rule to the circumstances of the particular case.

"When the guest is required to deposit valuables in a safe during his stay at the inn, even admitting that the innkeeper might, by a notice, so limit his liability, still, when the baggage is prepared for traveling and has been placed under the care of the innkeeper's servants for that purpose, he is liable notwithstanding such notice."[3]

In a case in Vermont, a guest left the inn to lodge that night with his brother, leaving with the innkeeper a horse and bag of money, but not intending to return to the inn as a guest. During the night the money was stolen. The court said: "It is well settled that, if a person leave at an inn property from which the innkeeper can derive no gain from its keeping, that is *dead property*, as it is termed, and goes away himself and it is stolen in his absence, he shall have no action against his host, as innkeeper, for the reason that he was not a guest at the time."[4]

In a Mississippi case, one who had passed the night at an inn, paid his bill and had his name checked from the register to escape liability as a guest during the day, though he intended to return and lodge at the inn that evening. Upon his return a valise left in his room with a friend was missing. The court said: "The expectation thereafter to become a guest did not continue the relation terminated at his (the guest's) instance and for his advantage, by settling his account for entertainment. An innkeeper is chargeable, as such, because of the profit derivable from entertaining. The right to charge is the criterion of the innkeeper's liability. When the liability of the guest to be charged, as such, ceases, his claim on the innkeeper, as such, expires, subject only to the right to hold him responsible for the baggage of the guest for such time as may be reasonable to effect a removal, to be determined by circumstances.

Upon the facts of this case, the respective rights which spring from the relation of innkeeper and guest did not exist, for one cannot escape the just burdens of a particular relation and at the same time claim the advantages of it."[5]

In a New York case, a guest paid his bill in the morning and left his trunk in the inn. When he returned in the afternoon it was gone. In the opinion by the court, it was said: "That relation (of guest and innkeeper) ceases when the guest pays his bill and leaves the house with the declared intention of not returning. In such a case, it is at his own peril, we apprehend, that he leaves his baggage or other property behind him. The innkeeper has a right to believe that he has taken it with him and is therefore no longer responsible for its safe keeping, unless it is specially committed to his charge, and then only as an ordinary bailee. His common law liability is at an end."[6]

1 Grinnell v. Cook, 3 Hill, 489; McDonald v. Edgerton, 5 Barb. 560.

2 Miller v. Peeples, 60 Miss. 819; S. C., 45 Am. Rep. 433; Seymour v. Cook, 53 Barb. 451; Bendetson v. French, 46 N. Y. 266; Stanton v. Leland, 4 E. D. Smith, 88.

3 Stanton v. Leland, *supra;* Bendetson v. French, *supra.*

4 McDaniels v. Robinson, 28 Vt. 387; S. C., 67 Am. Dec 720.

5 Mills v. Peeples, 60 Miss. 819; S. C., 45 Am. Rep. 423.

6 Wintermute v. Clark, 5 Sandf. 243.

In a Canadian case, a traveler went to an inn, took a room, saying that he only wanted to change his dress, and after so doing and taking refreshment left the inn, intending to return that night. He said nothing of such intention to the innkeeper, and did not return till the next morning, when his baggage, left in the room, was missing. *Held*, that the relation of innkeeper and guest had terminated when the latter left the inn.[7]

It is difficult to harmonize the above cases with the principal case, and the Maryland and Georgia cases cited in support of it, as regards the innkeeper's liability as an insurer, unless his *consent* to care for property left with him can extend his liability as innkeeper.

Other authorities make against the doctrine of strict liability, by making a distinction between "*dead*" property, for the keeping of which the innkeeper is not entitled to compensation, and *animate* property, for the care of which he is remunerated, and declare that he is liable only for gross negligence in the case of the former.[8]

The case of Murray v. Clarke,[9] cited in the principal case, is very similar to it, and was decided upon the ground that, the innkeeper was bound to at least ordinary care, and that the loss of baggage is *prima facie* evidence of negligence.

A boarding-house keeper having no lien on the boarder's property left with him is liable for gross negligence in its loss.[10]

CHAS. A. ROBBINS.

Lincoln, Neb.

[7] Lynar v. Mossop, 36 U. C. Q. B. 23.

[8] Grinnell v. Cook, 3 Hill, 489; Bac. Abr. Inns, C. (5). See also Day v. Bather, 2 H. & C. 14.

[9] 2 Daly, 102.

[10] Lawrence v. Howard, 1 Utah, 142.

For other cases involving the innkeeper's liability, see Peet v. McGraw, 25 Wend. 653; Cheesbrough v. Taylor, 9 Am. L. Reg. (O. S.) 435; Arcade Hotel v. Wiatt, 25 Am. L. Reg. (N. S.) 211; s. c., 44 Ohio St. —.

WILL—CONSTRUCTION—TRUST.

GEORGIANA TERRY V. WILLIAM H. SMITH, ADM'R, ETC.

*New Jersey Court of Chancery.**

1. A testatrix, after directing the payment of her debts and funeral expenses, gave to one of her daughters the interest of one equal undivided sixth part of all her estate for life, with remainder over, and made the same bequest to complainant. She then gave two pecuniary legacies, and then gave all the rest of her estate to her executor "in trust for the execution of her will," and gave to another daughter the income of such residue for life, with remainder over. The personal estate is $700, the real $42,000, and the debts about $14,000. *Held* (1), that complainant's share, although evidently given in trust, is not subject to the trust of the residue, and consists of one-sixth of the whole estate, after the payments of the debts and expenses, for which the court may appoint a trustee; (2) that if the real estate can be equitably divided, complainant's share thereof may be set off for her benefit, and she may enjoy it as a tenant for life, but, if not thus partible, there must be a conversion.

2. If the language is not doubtful, the mere fact that the reasons assigned by the testatrix for discriminating in the gifts to certain legatees are false in fact, cannot control the construction of her will, although such construction may fail to effectuate her purpose.

Bill for partition. On final hearing on pleadings.

THE CHANCELLOR: The complainant seeks partition of the land of her late mother, Harriet E. Manning, deceased, and an account of the rents and profits thereof coming to her, and an account of the personal estate of her mother, and a decree that her share thereof be invested for her benefit. She claims under the will of her mother a life interest in one-sixth of the whole estate. By the will the testatrix, after directing payment of her debts and funeral expenses by her executor and trustee therein named, gave and bequeathed to her daughter, Frances M. G. Wilson, "the interest of the one equal undivided one-sixth part or portion" of her whole estate, during Mrs. Wilson's natural life, and directed that upon the death of Mrs. Wilson "the said interest and principal thereof" be paid absolutely to Georgiana Sweet, a granddaughter of the testatrix. She then gave and bequeathed to her daughter, the complainant, "the interest of the one equal undivided one-sixth interest, part or portion" of the whole estate during the complainant's natural life, and directed that on the death of the complainant "the said interest, as well as principal thereof," be paid absolutely to the before-mentioned Georgiana Sweet. She next gave a legacy of $1,000 to her sister, Mrs. Hendrickson (which, however, she subsequently revoked by a codicil), and $5,000 absolutely to her granddaughter, Bessie Belle Bateman, daughter of her daughter, Nellie J. Smith, on her attaining to the age of twenty-one years, and $2,000 absolutely to Harriet L. Smith, another daughter of Mrs. Smith, upon her attaining to her majority; and she then gave and devised all the balance and residue of all her property, both real and personal, of whatever nature or kind, and wheresoever situated, to James A. Bradley, her executor, "in trust for the execution of her will," and gave to her daughter, Mrs. Smith, all the rents, issues and profits of all her estate, both real and personal, so to be held in trust, and directed the executor to pay over to her those rents, issues and profits quarterly for and during her natural life; and, upon her death, gave, bequeathed and devised all the remainder and residue of her estate, both real and personal, to Mrs. Smith's before-mentioned two daughters absolutely. The value of the personal property was, it is said, about $700; that of the real estate about $42,000, and the debts amounted to about $14,200.

The gift to the complainant is of the interest of the clear one-sixth of the estate, real and personal. The scheme of the will is to give to her and Mrs. Wilson each one-sixth of the entire estate for life, with remainder to the complainant's daughter; to give to Mrs. Smith's two daughters $7,000, and

* *Advance Sheets of Vol. 42 New Jersey Equity Reports.*

then to give the residue of the estate to the executor to pay debts and funeral and testamentary expenses, and then to pay over to Mrs. Smith, quarterly, the rents, issues and profits of the balance of the residue, and, at her death, to hand over such balance to Mrs. Smith's two daughters. The shares of the complainant and Mrs. Wilson are not subject to the trust created for the residue. The words "for the execution of my will" are employed in the will to qualify the trust, but they are superfluous, and do not extend it over the shares of the complainant and her sister, Mrs. Wilson. The debts and the pecuniary legacies of $5,000, and $20,000 to Mrs. Smith's daughters, are to be paid out of the residue in exoneration of those shares. The complainant and Mrs. Wilson are each entitled to the interest of an undivided one-sixth of all of the testator's estate, real and personal, without any deduction for the payment of debts, or for the payment of the pecuniary legacies.

The trust of the residue did not devolve upon the administrator with the will annexed. Brush v. Young, 4 Dutch. 237; Lanning v. Sisters of St. France, 8 Stew. Eq. 392.

The complainant is entitled to have her share set off to her for her use. If good reason be shown for so doing, a mixed trust estate is partible in equity. Wetmore v. Zabriskie, 2 Stew. Eq. 62. It is manifest, from the language of the bequest, that the testatrix contemplated a conversion of the share into money, and the investment thereof for the benefit of the complainant for life. The gift to her is of the "interest of the equal undivided one-sixth part or portion" of the estate, and the will directs that after her death the "said interest and principal thereof" be "paid" to Georgiana Sweet. And so, too, the gift to Mrs. Wilson is of the "interest of the one equal undivided sixth interest, part or portion" of the estate for life, with a direction that upon her death the "interest as well as the principal thereof" be "paid" to Georgiana Sweet. The testatrix, indeed, gives no express power of sale of the real estate, and, in the gift of the residue to Mrs. Smith, appears not to have contemplated the sale of the real estate therein, for she gives to her the rents, issues and profits for life, and gives, bequeaths and devises the property, after Mrs. Smith's death, to Mrs. Smith's daughters. The difference between the provision for the complainant and Mrs. Wilson and the provision for Mrs. Smith is very marked. The testatrix appoints no trustee of the shares of the complainant and Mrs. Wilson, but she evidently meant to create a trust as to those shares. In such case where such a trust is created, and no trustee is appointed, the trust would devolve upon the executor. But the executor has renounced, and refuses to act, and the administrator has no authority to execute the trust. Under such circumstances this court would appoint a trustee. If the real estate can be partitioned without prejudice to the interests of the owners, the share of the complainant may be set off, and she may enjoy it as tenant for life.

By the will the testatrix declares that her reason for bequeathing a larger share of her estate to Mrs. Smith than to the complainant and Mrs. Wilson was not want of affection for the latter, but because they were "amply provided for in this world's goods," whereas Mrs. Smith was poor and had no property of her own whatever; and that her reason for giving more of her estate to Mrs. Smith's two daughters than to her other granddaughter, Georgiana Sweet, was that they were poor and had no property whatever, while Georgiana Sweet had ample means and property in her own right. It is urged on behalf of Mrs. Smith and daughters, that under the construction which is above put upon the will, the testatrix's intention to give to Mrs. Smith more than she gave to the complainant and Mrs. Wilson will be frustrated. But this consideration cannot control in the construction of the will, inasmuch as the language and terms of the instrument are not doubtful. The fact that the testatrix's plan of division of her property fails to effectuate her purpose in this respect will not justify the court in disregarding the plain provisions of the will. If her design is defeated, it is because she overvalued her property, or because it has fallen in value, or because she contracted debts or met losses after the making of the will. Where the testator's language and the provisions of the will are plain the court must be guided by them.

NOTE.—*Query*, whether a devise revoked because the testator says by codicil he is advised that the legacy is void in law, which is not so, is a valid revocation.[1]

After a devise to L, in tail, and the death of L in testatrix's life-time, leaving a daughter, E, of which testatrix was ignorant, she made a codicil reciting that L had died without issue and devising L's estate over: *Held*, to be only a conditional revocation, and that E was entitled.[2]

A testator, in 1849, gave the interest of a fund to his daughter Charlotte, by her maiden name, with a gift over of the fund in case she should marry or die unmarried. She had been married in 1818, as testator knew, but her husband had not been heard of for several years prior to 1849. After testator's death he reappeared, and on Charlotte's death claimed the fund as her husband. *Held*, that the gift showed that the testator believed him to be dead, and that he intended that no husband of Charlotte's should have the fund.[3]

A testator assigned as a reason for discriminating between gifts to A and B that A could, under a clause in a prior deed of part of the property from himself to A, be required to bring it into hotchpot, which was not a fact. *Held*, that A could not be required to elect.[4]

[1] Atty.-Gen. v. Lloyd, 1 Ves. Sr. 32; 3 Atk. 551; James's Goods, 19 L. T. 610; Dunham v. Averill, 45 Conn. 61, 77; Armorer v. Case, 9 La. Ann. 288; Skipweth v. Cabell, 19 Gratt. 758; Arthur v. Arthur, 10 Barb. 9.

[2] Evans v. Evans, 2 Perry & D. 378; 10 Ad. & E. 228.

[3] Crothwaite v. Dean, L. R. (5 Eq.) 249. See Pratt v. Mathew, 22 Beav. 328.

[4] Langslow v. Langslow, 21 Beav. 552. See Box v. Barrett, L. R. (3 Eq.) 244.

Where £3,000 were given, on the decease of A without issue, to the children of B, and by a codicil testator recited that he had already given the £3,000 to B for life, with remainder to B's children, and then revoked the gift as to £2,000 and gave it to C: *Held*, that B could not claim the other £1,000 for life.[5]

But a legacy will not be cut down by a mere misrecital of its amount in a codicil.[6]

A testator assigned as a reason for revoking a legacy to A, that he had provided A with a permanent home, when, in fact, he had not so provided. *Held*, that the revocation was valid.[7]

The words in a will, "I have already given to my son John lot No. 1," which was not a fact, do not constitute a devise thereof.[8]

A recital that the title to certain lands is in A, which, in fact, is in testator, does not amount to a devise thereof, but where the title should, in justice, be in A, equity will not correct the mistake.[9]

After giving to his daughter the use of the residue of his estate after her marriage, with remainder to her children, a testator, by codicil, revoked the gift because he declared that in consequence of nervous debility she was unfit to marry, and therefore should not marry. *Held*, that the court would not inquire into the fact whether the testator was mistaken or not, with reference to his daughter's health or capacity.[10]

If a testator assign as a reason for revoking a legacy that the legatee is dead, which is not true in fact, such revocation is void.[11]

A testator, by codicil, recited that he thereby gave his grandson a legacy because he had disinherited him, whereas, in fact, he had given him a large legacy in the will. *Held*, that the legacy in the will was not revoked, but that the codicil was void for mistake.[12]

So, if a testator, believing his will to be lost, execute another which is probated, and afterwards the original is found.[13]

Testatrix bequeathed to A "£300 due on bond." She owed A only £120, but A was held entitled to the £300.[14]

A specific bequest made to testator's granddaughter in satisfaction of a debt said by testator to be due from him to her, whereas, in fact, it was due to her father, cannot be charged therewith.[15]

Under a direction to pay debts, "including a debt of £300 owing from me to my daughter," whereas, the testator owed her only £150. *Held*, that she was not entitled to more than £150.[16]

A testator gave a legacy to A, and by codicil stated that he had advanced a certain amount to A, which should be deducted from the legacy. *Held*, that the amount stated should be deducted, although the advancement was, in fact, less than that sum.[17]

A testator gave his daughter "four hundred dollars that she has now in her possession." She never had that amount or any other of her father, but shortly before the will was made he indorsed and gave to her a promissory note of her husband for that sum. *Held*, that she had no claim for the legacy.[18]

As to the effect of a testator's mistake in the amount of a certain legacy.[19] Or his estate in lands.[20]

The words in a will, "I acknowledged N, my second cousin, to be my next of kin and heir-at-law to all my property situate in M," is an effectual gift to N, who was, in fact, neither heir or next of kin of the testator.[21]

A testator made a bequest to "my stepdaughter Sarah," who was not, in fact, such, because the marriage of her mother to testator was void, as the mother knew, but Sarah and the testator did not. *Held*, that Sarah was entitled.[22]

A gift to a trustee was declared by the testator to be made in pursuance of a prior marriage settlement. *Held*, that the trustee was entitled thereto, although the marriage settlement was inoperative at the time the will was made.[23]

JOHN H. STEWART.

5 *Re* Smith, 2 Johns. & Kem. 594.

6 Gordon v. Hoffman, 7 Sim. 29; Mann v. Fuller, Kay, 624.

7 Hayes v. Hayes, 6 C. E. Gr. 265.

8 Smith v. Meyers, 2 U. C. Q. B. (O. S.) 301 (335). See Edmunds v. Waugh, 4 Drew. 75; Denn v. Cornell, 3 Johns. 174; Burford v. Burford, 29 Pa. St. 221.

9 Williams v. Allen, 17 Ga. 81.

10 Morley v. Reynoldson, 2 Hare, 570.

11 Campbell v. French, 3 Ves. 321; Barclay v. Maskelyne, Johns. 124. See Gifford v. Dyer, 2 R. I. 99; Ritter v. Fox, 6 Whart. 99.

12 Mordecai v. Boylan, 6 Jones Eq. 365.

13 Moresby's Goods, 1 Hagg. 378. See Pringle v. McPherson, 2 Brev. 279; Onions v. Tyrer, 1 P. Wms. 345.

14 Whitfield v. Clemment, 1 Meriv. 402. See Wood v. White, 32 Me. 340; Sherwood v. Sherwood, 45 Wis. 360.

15 Harrison v. Haskins, 2 Pat. & H. 388.

16 Wilson v. Morley, L. R. (5 Ch. Div.) 776.

17 Aird v. Quick, (L. R. (12 Ch. Div.) 291; Quihampton v. Going, 24 W. R. 917; McAlister v. Butterfield, 31 Ind. 25; Bunnell v. Bunnell, 73 Ind. 163; Jackson v. Payne, 2 Metc. (Ky.) 567; Barker v. Comins, 110 Mass. 477; Sayre v. Sayre, 5 Stew. Eq. 61; 8 Stew. Eq. 563; Outcalt v. Appleby, 9 Stew. Eq. 75, note; Painter v. Painter, 18 Ohio, 247. See Van Houten v. Post, 6 Stew. Eq. 344; Whately v. Spooner, 3 K. & J. 542; Hoak v. Hoak, 5 Watts, 80; Bullock v. Bullock, 2 Dev. Eq. 397.

18 Snow v. Moore, 107 Mass. 510.

19 Reed v. Strangways, 14 Beav. 139; Thomas v. Howell, L. R. (18 Eq.) 198; Milner v. Milner, 1 Ves. Sr. 106; Purse v. Snaplin, 1 Atk. 414; Danvers v. Manning, 2 Bro. C. C. 18; Jordan v. Fortescue, 11 Jur. 549; Brackenburg v. Brackenburg, 2 Eden, 275; Amb. 474; Berkeley v. Palling, 1 Russ. 496; Trevor v. Trevor, 5 Russ. 24; McLennan v. Wishart, 14 Grant's Ch. 512.

20 Burger v. Hill, 1 Bradf. 360; Harmer v. Moulton, 23 Fed. Rep. 5; Farrar v. Ayres, 5 Pick. 409. See Wilkins v. Kennedy, 9 East, 366.

21 Parker v. Nickson, 1 De G. J. & S. 177.

22 Wilkinson v. Jonghin, 12 Jur. (N. S.) 330; L. R. (2 Eq.) 319.

23 Dyke v. Dyke, 44 L. T. (N. S.) 568 See Adams v. Adams, 1 Hare, 537; Mackem v. Machem, 28 Ala. 374. See, further, Cole v. Wade, 16 Ves. 46; Kennell v. Abbott, 4 Ves. 808; Florey v. Florey, 24 Ala. 241; Hearn v. Ross, 4 Harring. 46; Jones v. Habersham, 63 Ga. 146; Cleveland v. Carson, 10 Stew. Eq. 377 and note; Wallize v. Wallize, 55 Pa. St. 242; Whitlock v. Wardlaw, 7 Rich. 453; Eatherly v. Eatherly, 1 Coldw. 461; Hunt v. White, 24 Tex. 643.

WEEKLY DIGEST

Of ALL the Current Opinions of all the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States.

1. ABATEMENT—Revivor—Administratrix.——When a relator dies pending proceedings to have his dismissal set aside and his salary or arrears of it paid, his administratrix may revive the proceeding and be substituted as relator.—*People ex rel. v. Commrs., etc.*, N. Y. Ct. App., May 10, 1887; 12 N. E. Rep. 179.

2. ADMINISTRATOR — Who Entitled.——During the first thirty days after the death of the testator, the right of administration rests with the widow or next of kin, or whomsoever they may appoint, if suitable; after that, it rests with the principal creditor, and if they are not competent or willing, it is the duty of the county judge to select some party.—*Atkinson v. Hasty*, S. C. Neb., June 8, 1887; 33 N. W. Rep. 206.

3. ADMIRALTY—Appeal to Circuit Court—Appeal to Supreme Court—Excessive Decree.——On appeal in admiralty from the district court, the circuit court tries the case *de novo* and can reduce the judgment, though the libelers have not appealed. The supreme court will not alter the award of the circuit court on appeal as excessive, unless it cannot be justified by any rule of law.—*The Hesper*, U. S. S. C., May 27, 1887; 7 S. C. Rep. 1177.

4. ADVANCEMENT—Intention—Real Estate.——Merely allowing a child to go into possession of land with the expressed intention that the child might use it for life, and it then should go to the child's children, does not deprive the parent of the control of the property, nor is it an advancement.—*Joyce v. Hamilton*, S. C. Ind., May 26, 1887; 12 N. E. Rep. 294.

5. ADVERSE POSSESSION—Nature of.——Where lands are unfit for cultivation, and only of use for raising hay and grass, such use openly, and to the knowledge of the neighborhood for the statutory period, is sufficient to constitute adverse possession under color of title.—*Merrill v. Tobin*, U. S. C. C. (Iowa), January 24, 1887; 30 Fed. Rep. 738.

6. APPEAL—Affirmance of Judgment — Modification. ——An affirmance by the supreme court of the judgment of the appellate court will not be modified, because it is alleged to be inconsistent in its opinions with the opinion given by the appellate court, but not contained in the record.—*Vogel v. Brom*, S. C. Ill., June 14, 1887; 12 N. E. Rep. 252.

7. APPEAL—Bonds — Rents.——Where the condition of a bond given on appeal from a judgment of a circuit commissioner in ejectment, under How. Ann. St. Mich., § 8295, provides that the principal shall pay the judgment together with the rent, the securities are liable for the rent claimed, though the circuit court did not find the amount of the rent.—*Bauer v. Wasson*, S. C. Mich., June 9, 1887; 33 N. W. Rep. 186.

8. APPEAL—Exceptions—Assignment of Errors—Corporation.——An appellate court will not take cognizance of errors assigned, which were not relied on in court below for a new trial. If the ground of exceptions is the admission or exclusion of evidence, the purport of the evidence must be set out in the assignment of errors. One who sells shares in a corporation warrants it to be a *de facto*, but not a *de jure* corporation.—*Harter v. Elsroth*, S. C. Ind., May 24, 1887; 12 N. E. Rep. 129.

9. APPEAL—Costs—Payment.——The payment of the costs of an appeal from a justice of the peace within ten days, as required by Colorado law, is not a prerequisite to the right of appeal, if the justice file the transcript in the appellate court without such payment.—*Carbonate Town Co. v. Ives*, S. C. Colo., June 7, 1887; 14 Pac. Rep. 120.

10. APPEAL—Final Order—Foreclosure.——A decree of foreclosure of a railroad mortgage, containing an order of sale, if the mortgage is not paid off by a certain day, is not appealable as a final order, when it also orders a reference to masters to determine the prior liens, the order of sale and the advertisement thereof.—*Parsons v. Robinson*, U. S. S. C., May 23, 1887; 7 S. C. Rep. 1153.

11. APPEAL — Insolvency Court.——A statute provides, that in cases of disputed claims before the insolvency court, the question might be referred to commissioners, and in such cases an appeal lay from the insolvency court to the county court. *Held*, that an appeal was not allowable where the question was not referred, but was decided by the insolvency court.—*In re Estate of Barnard*, S. C. Vt., May 28, 1887; 9 Atl. Rep. 553.

12. APPEAL — Instruction — Harmless Error.——The refusal to give an instruction, to which the party was entitled, is no ground for a reversal, if the jury finds for him in that issue.—*Pritchard v. Hewitt*, S. C. Mo., May 16, 1887; 4 S. W. Rep. 437.

13. APPEAL—Instruction — Reversal.——An instruction, not warranted by the pleading or evidence, will require the reversal of the judgment if it have a tendency to mislead the jury.—*Esterly v. Van Slyke*, S. C. Neb., June 8, 1887; 33 N. W. Rep. 209.

14. APPEAL—Jurisdiction — Amount—Mandamus.—— When the appealability of a case is in question as to amount involved, affidavits on that subject are admissible in evidence, as to show the value of a franchise. *Mandamus* will lie to compel the performance of duties *purely* ministerial, but not if the exercise of any discretion is required.—*State ex rel. v. Police Jury*, S. C. La., May 23, 1887; 2 South. Rep. 305.

15. APPEAL—Jurisdiction—Justice.——An appeal will not lie to the supreme court from cases originating before a justice, unless the amount in controversy exceeds $50, and if plaintiff is content with his judgment, its amount and not the sum demanded controls the jurisdiction.—*Cincinnati, etc. Co. v. McDade*, S. C. Ind., May 11, 1887; 12 N. E. Rep. 135.

16. APPEAL—New Trial—Actions of Jury. ——The allowance of a new trial on account of irregularities of the jury, as shown by affidavits of jurymen, is in the discretion of the trial judge, and his action will not be reviewed on appeal.—*State v. Williams*, S. C. N. Car., May 21, 1887; 2 S. E. Rep. 370.

17. APPEAL—Referee— Report. —— The finding of a referee has evidence to support it, and it will not be reversed simply because the supreme court would have found differently.—*Marr v. Marr*, S. C. Penn., May 9, 1887; 9 Atl. Rep. 502.

18. APPEAL — Statute — Construction — Attachment — Personal Judgment — Delivery Bond. —— Statutes of Indiana, relating to appeals, construed. Property at-

tached remains *in custodia legis* after its tranfer upon delivery bond to the defendant. A personal judgment in an attachment case operates to discharge the attachment and releases the sureties in the delivery bond.—*Wright v. Manns*, S. C. Ind., May 24, 1887; 12 N. E. Rep. 160.

19. APPEARANCE—Waiver — Highways. —— Where a party owning land, through which it is proposed to run a public road, appears before the county board and asks them to reconsider their proceedings in the case, and then asks for the damages caused to him thereby, he waives the earlier irregularity in not giving him any notice of the proceedings.—*Stevens v. Leavenworth Co.*, S. C. Kan. June 11, 1887; 14 Pac. Rep. 175.

20. ARMY —Court-martial — Approval. —— The sentence of a court-martial in time of peace is inoperative, unless judicially approved by the president, and it must appear that it is the result of his personal examination, and not a mere departmental order.—*Runkle v. United States*, U. S. S. C., May 27, 1887; 7 S. C. Rep. 1141.

21. ARREST—Affidavit.—— Where an affidavit positively states that, within affiant's knowledge, defendants procured goods from plaintiff's by false and fraudulent representations as to his ability to pay, the issuance of a *capias ad respondem* is sufficiently authorized. —*Hatch v. Saunders*, S. C. Mich., June 9, 1887; 33 N. W. Rep. 178.

22. ASSAULT AND BATTERY—Mutual Consent.——It is no defense to a civil action for assault and battery that the fight was entered into by mutual consent. The fact, however, may be given in evidence in mitigation of damages.—*Barholt v. Wright*, S. C. Ohio, May 19, 1887; 12 N. E. Rep. 185.

23. ASSIGNMENT—For Benefit of Creditors—Firm and Individual Debts—Fraud — Firm Creditors.——An assignment is not void because it provides for the payment of individual debts out of combined individual assets. The rule of law is that it will lean to the validity of an assignment, in the absence of evidence of fraudulent intent.—*Crook v. Rendskopf*, N. Y. Ct. App., April 26, 1887; 12 N. E. Rep. 174.

24. ASSIGNMENT—For Benefit of Creditors—Statute—Probate Court—Powers.——Construction of Ohio statute relative to assignments for the benefit of creditors. Powers conferred by those statutes on the probate courts.—*Sayler v. Simpson*, S. C. Ohio, May 10 1887; 12 N. E Rep. 181.}

25. ATTACHMENT—Affidavit. —— An affidavit for an attachment is sufficient which states that defendant had sold part of the property on which plaintiff had a lien, with the intention of defeating the lien.—*Mixsen v. Holley*, S. C. S. Car., March 12, 1887; 2 S. E. Rep. 385.

26. ATTACHMENT—Sales by Consent — Creditors. —— Where attached property is sold under order of court and the funds are paid into court by consent of the attaching creditors and the debtor, creditors, who then had no judgments, cannot object to the regularity of such proceedings.—*Walter v. Bickham*, U. S. S. C., May 27, 1887; 7 S. C. Rep. 1197.

27. ATTACHMENT—Service of Process—Posting — Statute.——Construction of California statute with reference to the service of attachment process. If no occupant can be found the notice may be posted on a building on the premises.—*Davis v. Baker*, S. C. Cal., June 10, 1887; 14 Pac. Rep. 102.

28. ATTORNEY—Compensation Out of Fund in Court.—Where business, which an attorney at law has been employed to attend, produces a fund in court, he is, upon a successful conclusion of the matter, entitled to compensation out of the fund.—*Spencer's Appeal*, Sa C. Penn., May 9, 1887; 9 Atl. Rep. 323.

29. ATTORNEY—Compensation—Quantum Meruit.—— An attorney who has discharged his duty throughout the substantial part of an action, and withdraws from the case after it is practically concluded, except some minor matters of accounting, is entitled to compensation for the services he has rendered.—*Whitney v. Sullivan*, S. C. S. Car., March 10, 1887; 2 S. E. Rep. 391.

30. BANKRUPTCY—Voluntary Conveyance — Action by Assignee.——Where an insolvent person makes a voluntary conveyance of part of his land to his children, his assignee in bankruptcy, in the absence of fraud in the transaction, cannot attack it.—*Adams v. Riley*, U. S. S. C., May 27, 1887; 7 S. C. Rep. 1208.

31. BANKS — Managers' Liability.—— Managers of a savings bank are liable, if they participate in prohibited acts which lead to a loss, or if they promote them, or if by neglect of proper supervision they permit others to do them.—*Dodd v. Wilkinson*, N. Y. Ct. App., March Term, 1887; 9 Atl. Rep. 685.

32. BOND—Consideration—Subsequent Surety—Pleading.——A bond for a loan of school money provides for giving additional security when required, and a signature thereunder by a subsequent security relates back to the original execution of the bond. In pleading a bond, the consideration need not be set out.—*Montgomery Co. v. Auckley*, S. C. Mo., May 16, 1887; 4 S. W. Rep. 425.

33. BOND—Penal Damages.——In actions upon penal bonds with collateral conditions, whether they are official or otherwise, the damages cannot exceed the penalties.—*Turner v. Lord*, S. C. Mo., May 16, 1887; 2 S. E. Rep. 420.

34. CEMETERIES—Title of Lot—Owner.——A cemetary lot-owner, to whom the fee is deeded for uses of sepulture only and subject to conditions and limitations imposed by managers, who by charter are given the care, management and general superintendance over the cemetery, can maintain ejectment against the cemetery association.—*N. Y. Bay Cem. Co. v. Buckmaster*, N. J. Ct. Err. & App., March Term, 1887; 9 Atl. Rep. 591.

35. CLAIMS—Against United States—Qui Tam Action—Compromise.——The secretary of the treasury cannot, under § 3469, U. S Rev. Stat., satisfy a judgment for $100, in a case where a prosecutor, under § 3491, has paid the costs of a suit and obtained a judgment against one defrauding the United States for $23,576.—*U. S. v. Griswold*, U. S. C. C. (Ohio), April 13, 1887; 30 Fed. Rep. 762.

36 COLLISION— Total Loss — Limit of Liability.—— When, in a collision, one boat was sunk and became a total loss, and the other was subsequently bonded and appraised, and her appraisal was less than half the total loss, and the damages were decreed to be divided, a decree should be entered for the total amount of the bond in favor of the owners of the sunken boat.—*The Manitoba*, U. S. S. C., May 23, 1887; 7 S. C. Rep. 1158.

37. COMMON CARRIERS—Bills of Lading—Assumpsit.—In an action against a common carrier for not delivering the bales of cotton called for in its bills of lading, it may be shown that the marks on the cotton when received by it agreed with the marks described in the bill of lading, and that it has discharged its contract as therein contained.—*St. Louis, etc. R. Co. v. Knight*, U. S. S. C., May 23, 1887; 7 S. C. Rep. 1132.

38. CONFLICT OF LAWS—Married Women—Mortgage.—A mortgage executed in Ohio by a married woman on land in Indiana, is governed by the law of Indiana, and is void if executed to secure a debt of the husband.—*Swank v. Hufnagle*, S. C. Ind., May 26, 1887; 12 N. E. Rep. 303.

39. CONSPIRACY—Boycott.——It is a conspiracy, in Vermont, for persons to combine for the purpose of preventing or deterring a corporation from employing certain persons, or for intimidating or driving away persons from the employment of a corporation.—*State v. Stewart*, S. C. Vt. May 27, 1887; 9 Atl. Rep. 559.

40. CONSTITUTIONAL LAW—Bonds—Taxation — Obligation of Contracts.——The law of Missouri, requiring a county court not to assess taxes to pay the bonded debt of townships until the circuit court is satisfied of its necessity, is void as to such bonds issued before that law was adopted.—*Seibert v. United States*,, U. S. S. C., May 27, 1887; 7 S. C. Rep. 1190.

41. CONSTITUTIONAL LAW—Discrimination.—— A law is unconstitutional which imposes a license tax on sheep pastured in a county but belonging to other

counties, resident sheep owners who pay taxes on their sheep being exempt from such license tax.—*Lassen v. Cone*, S. C. Cal., May 31, 1887; 14 Pac. Rep. 100.

42. CONSTITUTIONAL LAW—Interstate Commerce—Telegrams.——The Indiana law, providing for the order in which telegrams shall be sent and for their delivery, is invalid relative to dispatches to be delivered in other States.—*W. U. Tel. Co. v. Pendleton*, U. S. S. C., May 27, 1887; 7 S. C. Rep. 1126.

43. CONSTITUTIONAL LAW—License.——That part of § 3952, R. L. Vt., which requires one peddling articles grown or manufactured in a foreign country to have a license, is in conflict with § 8, art. 1, Const. U. S.—*State v. Pratt*, S. C. Vt., May 28, 1887; 9 Atl. Rep. 556.

44. CONSTITUTIONAL LAW—Municipal Corporations.—Construction of the constitution of Indiana, with reference to the powers of the general assembly to amend the charters of municipal corporations and to extend their powers.—*Wiley v. Corporation of Bluffton*, S. C. Ind., May 25, 1887; 12 N. E. Rep. 165.

45. CONSTITUTIONAL LAW—Navigable Waters—Interstate Commerce.——Congress can lawfully, without the consent and against the protest of a State, allow a private corporation to occupy navigable waters within the State, and appropriate the soil under them, after satisfying the private owners, in order to construct a bridge for the purpose of interstate commerce.—*Decker v. Baltimore, etc. R. Co.*, U. S. C. C. (N. Y.), 1887; 30 Fed. Rep. 723.

46. CONSTITUTIONAL LAW—Private Markets.——The law which forbids the keeping of a private market within six squares of a public market is constitutional.—*State v. Natal*, S. C, La., May 25, 1887; 2 South Rep. 305.

47. CONSTITUTIONAL LAW—Title.——Where the title of a law expresses the general object of the law, though it does not indicate the means of attaining that object, it satisfies the constitutional requirement that the title shall express the object of every law.—*Govern v. State*, N. J. Ct. Err. & App., June Term, 1886; 9 Atl. Rep. 577.

48. CONTEMPT—Subpœna—Notary Public—Statute.—A court in California cannot punish for disobedience to a subpœna issued by a notary public, with reference to a deposition to be taken before him. Statutes on that subject construed.—*Ex parte Lezinski*, S. C. Cal., June 10, 1887; 14 Pac. Rep. 104.

49. CONTRACT — Bond — Agency — Sureties.——The sureties of agents doing business for an insurance company are not liable for excess of money advanced to such agents for commissions, expenses, etc., if such advances are not provided for in the contract and bond.—*Burlington, etc. Co. v. Johnson*, S. C. Ill., May 7, 1887; 12 N. E. Rep. 205.

50. CONTRACTS—Consideration — Grain Transactions.——Liabilities incurred under valid grain transactions by a commission merchant for his principal, and sufficient consideration for a note to him from the principal for the amount of the liabilities.—*Powell v. McCord*, S. C. Ill., June 17, 1887; 12 N. E. Rep. 262.

51. CONTRACTS—Illegality—Drainage—Taxation.——A contract to subscribe money to be used in enforcing the prompt payment of taxes by the purchase of the land at delinquent tax sales, which taxes were for drainage of land and constructing levees thereon, in which land the subscribers were interested, is binding, in agreement appearing to depress bidding at such sales.—*Stillwell v. Glasscock*, S. C. Mo., May 16, 1887; 4 S. W. Rep. 438.

52. CONTRACT—Lease — Mutuality.——A lease provided that it should not bind the lessee until he should be appointed to a certain office. *Held*, that the contract was not binding, and that the lessor was not bound upon the lessee's electing, notwithstanding his failure to obtain office, to take the lease.—*King v. Warfield*, Md. Ct. App., May 13, 1887; 9 Atl. Rep. 539.

53. CONTRACT—Performance—Damages for Delay.—In an action for the price of a machine, the defendant cannot set-off damages for delay in completion, when the contract fixed no date for its completion.—*Minneapolis, etc. Co. v. Kew-Murray, etc. Co.*, U. S. S. C., May 27, 1887; 7 S. C. Rep. 1187.

54. CONTRACT—Stipulation—Expert—Evidence.——In a contract for building a railroad, a stipulation that the decision of the engineer as to the questions relating to performance of contract shall be final and conclusive, is invalid. In such a contract the company is bound to furnish an honest and competent engineer. When time is of the essence of the contract, the contractor may submit the evidence of experts in favor of his positions as to the completion of the work in due season, if not prevented by the engineer.—*Louisville, etc. Co. v. Dennegan*, S. C. Ind., May 26, 1887; 12 N. E. Rep. 153.

55. COPYRIGHT — Piracy.——A subsequent compiler of a directory is only required by the law of copyright to do what the first compiler has done.—*List Pub. Co. v. Keller*, U. S. C. C. (N. Y.), April 12, 1887; 30 Fed. Rep. 772.

56. CORPORATIONS—Charter—Successors — Exemption from Taxation.——Where the legislature provided that the purchasers of the property of a corporation should become at once a body politic with all the privileges of the other corporation, such new corporation could not claim exemption from taxation, which right the first corporation had waived in return for benefits conferred.—*Seaboard, etc. R. Co. v. Norfolk Co.*, S. C. App. Va., April 21, 1887; 2 S. E. Rep. 278.

57. CORPORATION—Deed—Proof of Authority.——The evidence of one officer of a corporation, that he did not know of any authority being given for the execution of a deed, which fact he might or might not know, should not overcome the proof of authority shown by the seal of the corporation affixed to the deed.—*Parker v. Washoe, etc. Co.*, N. J. Ct. Err. & App., March Term, 1887; 9 Atl. Rep. 682.

58. COSTS — Mortgages — Foreclosure.—— Where a second mortgage on four lots is being foreclosed, and the owners of prior separate mortgages on each lot appear and prove their claims, they must pay the costs of the proceedings in proportion to the amount realized by each, though the sale of each lot did not bring enough to pay the first mortgage.—*Scott v. Somers*, N. J. Ct. Ch., May 20, 1887; 9 Atl. Rep. 718.

59. COSTS—Superfluous—Appeal.——Costs will be refused to a complainant whose decree is affirmed at the discretion of the court when the costs of the suit have been greatly and needlessly increased by him.—*Vliet v. Wyckoff*, N. J. Ct. Err. & App., March Term, 1887; 9 Atl. Rep. 679.

60. COUNTY—Action Against.——In Nevada, counties are liable to be sued in the State court the same as natural persons. *Held*, also in the courts of the United States.—*Vincent v. Lincoln Co.*, U. S. C. C. (Nev.) April 30, 1887; 30 Fed. Rep. 749.

61. COUNTY—Officers—Liability.—— A county is not liable for the act of a county treasurer, as being its agent, in the absence of a statute so providing. The county auditor acts as a governmental agent in drawing warrants on the county treasurer for township funds in his hands, and such warrants create no liability against the county.—*Vigo Tp. v. Knox Co.*, S. C. Ind., May 27, 1887; 12 N. Rep. 305.

62. COUNTY — County-seat — Location—Removal.—— When a county-seat has been located by vote at a place not incorporated, but described in a town plat duly executed and filed, the county commissioners cannot remove the county offices to an addition thereto subsequently laid out and platted.—*State v. Harwi*, S. C. Kan., June 11, 1887; 14 Pac. Rep. 158.

63. COUNTY—Towns — Boards of Health. —— Under Colorado laws, the necessary expenses incurred by a board of health appointed by town trustees in caring for an infected person, are chargeable to the county.—*County of Saguache v. Decker*, S. C. Colo., June 15, 1887; 14 Pac. Rep. 123.

64. COURTS—Jurisdiction — Statute — Evidence. —— Under New York statutes, the city may pay into the

supreme court the amount of an award against it made in the superior court for which different intervening claimants are contending in the latter court. Evidence which merely tends to establish an inference as to the operation and force of a written contract is inadmissible.—*Pollock v. Morris*, N. Y. Ct. App., May 13, 1887; 12 N. E. Rep. 179.

65. COURTS—Federal—State Constitution.——A State constitution cannot prohibit the judges of United States courts from charging juries regarding matters of fact.—*St. Louis, etc. R. Co. v. Vickers*, U. S. S. C., May 27, 1887; 7 S. C. Rep. 1216.

66. COVENANT—Construction — Estoppel.——A covenant to pay to the plaintiff all the money the defendant had originally deposited in a savings bank, is not fulfilled by the payment of $284.01, if it appears that the sum so deposited was much greater than that amount. Plaintiff is not estopped by the receipt of a bank book containing a credit of $284.01, if it appears that she was ignorant and illiterate.—*Birch v. Hutchings*, S. J. C. Mass., June 3, 1887; 12 N. E. Rep. 192.

67. CRIMINAL LAW—Accomplice — Corroboration.—— A conviction on the corroborated testimony of an accomplice is legal, but it is customary to charge the jury to be cautious in convicting on such testimony.—*State v. Miller*, S. C. N. Car., May 9, 1887; 2 S. E. Rep. 363.

68. CRIMINAL LAW—Destroying or Stealing Records—Intent.——One who stole papers belonging to the internal revenue office from a barn where they were stored, not knowing them to be records and believing them to be old paper, cannot be convicted of the offense prescribed by § 5403, Rev. Stat. U. S. A specific intent to destroy a record is necessary.—*U. S. v. DeGroat*, U. S. D. C. (Mich.), April 9, 1887; 30 Fed. Rep. 764.

69. CRIMINAL LAW — Dismissal — Two Indictments — Appeal.——To obtain consideration on appeal, a motion to dismiss an indictment because another is pending for the same cause, must be incorporated in the bill of exceptions. Under Missouri law, such motion cannot be sustained.—*State v. Vincent*, S. C. Mo., May 16, 1887; 4 S. W. Rep. 430.

70. CRIMINAL LAW—Indecent Letter—Sending Authorship.——Putting an indecent letter in a course of transmission, with the intent it shall reach the party, is a sending under the statute, provided it does reach the party. A conversation between the accused and others, wherein things occurred and expressions were used tending to connect the accused with the contents of the letter are admissible to prove his authorship, but other maters in the conversation are not admissible.—*Larison v. State*, S. C. N. J., May 24, 1887; 9 Atl. Rep. 700.

71. CRIMINAL LAW — Indictment — Duplicity. —— Charging burglary with intent to commit larceny, and that the larceny was actually consummated, in the same court, does not make an indictment bad for duplicity.—*Becker v. Com.*, S. C. Penn., May 9, 1887; 9 Atl. Rep. 510.

72. CRIMINAL LAW—Indictment—Habeas Corpus.—— A defendant is indicted under two indictments, one charging two, the other three offenses, all committed within six months. He is found guilty under both indictments, and is sentenced to six months imprisonment under each conviction to run concurrently. On petition for *habeas corpus*, *held*, that under Rev. Stat. U. S. § 5480, even assuming that a conviction could only be had for three offenses in six months, one indictment and conviction was valid, and the writ would not be granted.—*In re Hayes*, U. S. C. C. (Mass.), March 9, 1887; 30 Fed. Rep. 767.

73 CRIMINAL LAW—Information—Assault and Battery. ——An information before a justice of the peace for assault and battery, though filed by the prosecuting attorney, must be verified.—*State v. Calfer*, S. C. Mo., May 16, 1887; 2 S. E. Rep. 418.

74. CRIMINAL LAW—Murder in Second Degree.——In Missouri, those cases of murder at common law, where there is no specific intent to kill, but the law presumes the intent to kill, are murder in the second degree, unless the law makes them murder in the first degree or manslaughter.—*State v. O'Harra*, S. C. Mo., May 17, 1887; 4 S. W. Rep. 422.

75. CRIMINAL LAW—Nuisances—Bets — Horse Racing. ——A place of public resort for betting on horse races is a public nuisance, for which the keeper may be indicted under the law making wagers and bets on races unlawful, though the act making betting on horse races a criminal offense has been repealed.—*McClean v. State*, N. J. Ct. Err. & App., March Term, 1887; 9 Atl. Rep. 681.

76. CRIMINAL LAW—Opening Statement—Conduct.—— The prosecuting attorney in opening the case to a jury under an indictment for assault with attempt to kill, may state that he expects to prove that the defendant made forcible resistance to his arrest, and threatened to kill the officers.—*People v. Chalmers*, S. C. Utah, June 13, 1887; 14 Pac. Rep. 131.

77. CRIMINAL LAW—Preliminary Hearing—Waiver.—— A waiver of a preliminary hearing in a charge of murder in the first degree, is a waiver of a right of bail, and of an examination into the facts by *habeas corpus*, unless such waiver was induced by fear of personal violence.—*In re Secrest*, S. C. Kan., June 8, 1887; 14 Pac. Rep. 144.

78. CRIMINAL LAW — Punishment — Insolvency —Discharge.——Where one is sentenced to remain in jail after the expiration of his sentence till the costs are paid, he can obtain his discharge by a petition to the court, alleging his insolvency as provided by law.—*State v. Williams*, S. C. N. Car., May 21, 1887; 2 S. E. Rep. 370.

79. CRIMINAL LAW — Sheriff — Taxes — Fees.——A deputy sheriff can collect a fee of fifty cents for himself in collecting taxes, when he makes a levy and sale. An indictment for collecting more money as taxes than was due from the prosecutor, is not sustained by evidence of collecting that fee unlawfully.—*State v. Bisaner*, S. C. N. Car., May 16, 1887; 2 S. E. Rep. 368.

80. CRIMINAL LAW—Trial Without Plea.—Where a defendant is put on trial for a misdemeanor without a plea to the indictment having been entered, it is a mere technical error or irregularity, affording no ground for reversal of a judgment of conviction.—*Allyn v. State*, S. C. Neb., June 8, 1887; 33 N. W. Rep. 212.

81. CRIMINAL PRACTICE—Absence of Defendant.—— A person charged with a felony, not capital who appears at the trial, but wilfully absents himself during its continuance (being on recognizance), is not entitled to a new trial after being recaptured. In such case the court is not bound to discharge the jury and give the defendant a new trial.—*State v. Kelly*, S. C. N. Car., May 2, 1887; 2 S. E. Rep. 185.

82. CUSTOM DUTIES—Manufacturers—Forfeitures.—— When goods imported here belong to the manufacturer thereof, the invoice need not state the actual cost thereof at the place of exportation. Section 2864, Rev. Stat. U. S., is repealed by § 12, of act of June 22, 1874.—*U. S. v. Aufmordt*, U. S. S. C., May 27, 1887; 7 S. C. Rep. 1182.

83. CUSTOM DUTIES—Rosaries.——Rosaries are liable to the fifty per cent. *ad valorem* custom duties imposed on beads and bead ornaments.—*Benziger v. Robertson*, U. S. S. C., May 27, 1887; 7 S. C. Rep. 1169.

84. DEED—Delivery—Condition.——In a suit to quiet title, plaintiff claimed title under a lost unrecorded deed, and defendant denied the delivery of the deed, alleging that it was made upon condition, and that the condition was never performed. *Held*, that where the evidence of the delivery was not sufficient, and the fact of the condition and its non-performance was clearly proven, the plaintiff could not recover.—*St. Louis, etc. R. Co. v. Devin*, S. C. Iowa, June 13, 1887; 33 N. W. Rep. 232.

85. DEEDS—Description—Town Lots—Parol Evidence. ——Where two parties own adjoining lots by purchase from one grantor, the division law must be determined by the deeds. Where the deeds describe the lots only by number, use and occupation may determine the boundary line. Where the deed also designates the lots

as known and designated in the plan of the town, such plan must control.—*Davidson v. Arledge*, S. C. N. Car., May 21, 1887; 2 S. E. Rep. 378.

86. DEED — Reservation — Construction.——A deed with a water-right, excepting the use of water "as hereinafter provided," reserves and states when and to what extent the grantor might use the water. *Held*, that it had the same effect as if it had been stated in full in the part of the deed describing the right conveyed.—*Gage v. Barnes*, S. C. N. H., March 11. 1887; 9 Atl. Rep. 545.

87. DEED—Trust—Gift—Executrix.—— A father being surety for his son on a bond secured by deed of trust on his son's land, made several payments on the bond and died. His executrix paid off the balance of the bond and sought to enforce a foreclosure of the deed of trust. *Held*, that she could do so only as to the payments she had made, those made by the father being regarded as gifts to the son by his father.—*Scott v. Scott*, S. C. App. Va., April 28, 1887; 2 S. E. Rep. 431.

88. DEED — Unrecorded — Judgment. ——An unrecorded deed is void as against a judgment only when the judgment is against the party in whose name the title to the land appears of record (prior to the recording of such conveyance), in the office of the register of deeds of the county in which the lands are situated.—*Coles v. Berryhill*, S. C. Minn., June 1, 1887; 33 N. W. Rep. 213.

89. DEPOSITIONS — Admissibility—Residence.——The fact that a party is temporarily in a county while a cause in which his deposition has been taken is on trial, is no objection to the admissibility of the deposition.—*Waite v. Teeters*, S. C. Kan., June 11, 1887; 14 Pac. Rep. 146.

90. DIVORCE—Evidence.—— Mere circumstantial evidence of opportunity for committing adultery, will not authorize such a charge against a wife and a divorce thereon.—*Harberger v. Harberger*, S. C. Oreg., May 24, 1887; 14 Pac. Rep. 70.

91. DIVORCE—Opening Decree.——Where, in divorce proceedings, adultery is charged, but defendant, in her testimony, failed to deny it: *Held*, that the decree should be opened and the defendant allowed to testify on that point, as the public are interested in maintaining the married state.—*Osborne v. Osborne*, N. J. Ct. Ch., April 15, 1887; 9 Atl. Rep. 698.

92. DOWER—Purchase Price.——A wife who has, without privy examination, joined in the sale of lands with her husband and received the notes for the purchase price, may, after the death of her husband, claim dower in the lands, but the purchaser is entitled to damages for the money he has paid for such dower lands.—*Hodge v. Powell*, S. C. N. Car., May 2, 1887; 2 S. E. Rep. 182.

93. EJECTMENT—Practice—Rents and Profits.——It is too late, after a judgment in an ejectment case in favor of plaintiff has been affirmed and the case remanded, for the plaintiff to move for an account of rents and profits. He should have done so at the trial after verdict.—*Brendle v. Herren*, S. C. N. Car., April 25, 1887; 2 S. E. Rep. 158.

94. ELECTIONS—Qualified Voters—Majority—Registration—Adjudication.——Under the North Carolina constitution, prohibiting counties, etc., from incurring debts except upon a vote of the majority of the qualified voters therein, the reference is to the registered voters. A denial of registration by accident or inadvertence would vitiate the election, especially if it would materially affect the result. The declaration of the county commissioners that the matter has been adopted, may be contested in a proceeding brought directly for that purpose.—*McDowell v. Rutherford, etc. Co.*, S. C. N. Car., May 9, 1887; 2 S. E. Rep. 351.

95. EMINENT DOMAIN—Damages—Presumption of Payment.——Where land was appropriated for a canal in 1846, and a part of it was turned into a pond which was used for the canal, the presumption now is, that the damages therefor were paid, and that the canal company holds the land in fee.—*Blair v. Kiger* S. C. Ind., May 25, 1887; 12 N. E. Rep. 293.

96 EQUITY—Answer as Evidence.——A sworn answer in equity responsive to the bill must prevail, unless overcome by two witnesses or by one witness with corroborating circumstances.—*Morrison v. Durr*, U. S. S. C., May 27, 1887; 7 S. C. Rep. 1215.

97. EQUITY—Fraud—Fence Viewers — Award.——When adjoining land owners agree as to what portion of the partition fence each one shall maintain, an award of the fence viewers assigning a different portion to one of the owners, who has incurred expenses in maintaining his portion as agreed on, which award was obtained fraudulently by the other owner, may be set aside in equity, there being no other redress.—*Robertson v. Bell*, S. C. Kan., June 11, 1887; 14 Pac. Rep. 160.

98. EQUITY—Jurisdiction—Injunction—Mills. ——When a party alleges that the defendant illegally maintains a dam, which throws the water back on complainant's mill wheel above, and asks an injunction, to which the defendant answers, that he has a prescriptive right to maintain the dam, and that it does not interfere with the wheel, equity has no jurisdiction over such issues.—*Helme Co. v. Outcalt*, N. J. Ct. Err. & App., March Term, 1887; 9 Atl. Rep. 683.

99. ERROR—Writ of—Jurisdiction—State Court.——A writ of error to the superior court of Kentucky cannot be entertained by this court, unless the record shows affirmatively that no decision of the case could be had in the court of appeals, the highest court in the State.—*Fisher v. Carrico*, U. S. S. C., May 27, 1887; 7 S. C. Rep. 1227.

100. EQUITY — Reformation — Evidence.——The evidence of one witness contradicting a writing, which writing is corroborated by the plaintiff's testimony, is not sufficient in a suit to reform a written instrument.—*Gehres v. Crawford*, S. C. Penn., May 9, 1887; 9 Atl. Rep. 508.

101. EQUITY—Receiver—Sale—Relief.——Where a receiver, under orders of the court, sells mining property partly on deferred payments, the court's refusal to extend the time of payment, because the property is in litigation and in the hands of another receiver, will not be reviewed, there being no agreement to put the purchaser in possession. —*Alvord v. Strickler*, S. C. Colo., June 7, 1887; 14 Pac. Rep. 117.

102. EQUITY—Specific Performance — Evidence.——A court of equity will not decree specific performance, unless the contract is clearly made out, and will allow the defendant to use evidence, which will be denied to complainant.—*Veth v. Gierth*, S. C. Mo., May 16, 1887; 4 S. W. Rep. 432.

103. EQUITY—Practice — Appeal — Receiver.——A receiver will be appointed to take charge, pending an appeal, of lands ordered to be sold by such decree. And it is not necessary that there should be an application to reinstate the cause on the docket, the decree being interlocutory only.—*Adkins v. Edwards*, S. C. App. Va., May 5, 1887; 2 S. E. Rep. 439.

104. EQUITY—Practice—Master's Report — Evidence — Partnership. ——Upon hearing of exceptions to a master's report in an accounting proceeding, it is not competent to hear evidence that was not before the master.—*Cox v. Pierce*, S. C. Ill., May 12, 1887; 12 N. E. Rep. 194.

105. EQUITY—Practice—Motion to Dismiss.——A special master appointed to hear the evidence and report the facts, is not the proper party to whom a motion to dismiss a bill in equity should be addressed; such motion should be addressed to the chancellor.—*Smith v. Roe*, S. C. Vt., May 28, 1887; 9 Atl. Rep. 551.

106. ERROR — Writ of — Contempt — Jurisdiction.—— When judgment is entered, fining a party $25 for contempt, and an execution is issued thereon, and upon refusal of the court to quash the execution a writ of error is obtained: *Held*, that thereby the original judgment for contempt is not brought up for review, and this court has no jurisdiction, the amount involved

being $25.—*State v. Blair*, S. C. App. W. Va., March 26, 1887; 2 S. E. Rep. 333.

107. ESTOPPEL—Judgment—Distinct Rights.——When a person is made a party to a suit on account of his having certain interests therein, he is not estopped by that suit from asserting other and distinct interests in the subject-matter, which were not in issue in that suit. —*McNult v. Trogdon*, S. C. App. W. Va., March 26, 1887; 2 S. E. Rep. 328.

108. EVIDENCE — Parol — Written — Indorsement — Maturity of Note.——Parol evidence is inadmissible to show the object with which the defendant indorsed a promissory note. One taking a note on the third day of grace before it is actually dishonored, is protected against the equities.—*Johnson v. Glover*, S. C. Ill., June 17, 1887; 12 N. E. Rep. 257.

109. EVIDENCE—Relevancy—Acceptance of Deed.—— Where one point involved is, whether a party in the suit ever accepted a deed for certain land in a partition suit in another State, a transcript of the suit, showing that the land was sold to the party, and that the court confirmed the sale, is relevant evidence.—*Hunt v. Hunt*, N. J. Ct. Ch., April 23, 1887; 9 Atl. Rep. 690.

110. EXECUTORS—Final Settlement—Action.—— Where an executor makes a final settlement while litigation against the estate is still pending, for the purpose of defeating the recovery of a judgment, the settlement is in fraud of the court, and the pending suit may proceed, notwithstanding the settlement.—*Smiley v. Smiley's Exrs.*, S. C. Mo., May 16, 1887; 33 N. W. Rep. 443.

111. EXECUTION—Sale—Redemption.——The right of a creditor, under Indiana law, to redeem property of a debtor sold under execution, applies to the trustee in a mortgage of a railroad. Such redemption, where the creditor bought the property in for less than his judgment, does not reinstate his lien for the unpaid balance of his judgment.—*Porter v. Pittsburg, etc. Co.*, U. S. S. C., May 27, 1887; 7 S. C. Rep. 1206.

112. EXECUTION — Supplementary Proceedings — Affidavit—Interest.——Under California law, when an execution is returned unsatisfied, the judgment debtor may be required, without the filing of an affidavit, to appear before a referee to be examined, though, in such an affidavit, the judgment creditor says he has assigned the judgment, it is immaterial. So the objection that the affidavit was filed with the report of the referee comes too late.—*Collins v. Angell*, S. C. Cal., June 13, 1887; 14 Pac. Rep. 135.

113. EXECUTION—Supplementary Proceedings — Complaint.——A complaint in proceedings supplemental to execution, which fails to allege the residence of the defendant in the county, or that execution has issued to the sheriff of that county, is bad on general demurrer.—*Ponder v. Tate*, S. C. Ind., May 25, 1887; 12 N. E. Rep. 291.

114. EXECUTORS — Accounts — Trustees. —— The account of certain executors, passed in 1882, allowed them too large commissions, and the orphans' court, to correct the error, cut down their compensation as trustees in allowing an account of the same persons as trustees under the same will: *Held*, correct.—*Griggs v. Shaw*, N. J. Prerog. Ct., Feb. Term, 1887; 9 Atl. Rep. 678.

115. EXECUTORS—Claims—Priority.—— The orphans' court directed an administrator *de bonis non* to repay out of the balance of an insolvent estate in his hands a sum of money which an executor, since removed, has paid out of her own funds to settle debts of the estate. The appellate court will not reverse the decree as making a wrongful preference as against a claim for money loaned to the executors with which to pay other debts of the estate, there being no evidence that such money went to increase the assets.—*Chamberlain v. McDowell*, N. J. Prerog. Ct., February Term, 1887; 9 Atl. Rep. 677.

116. EXECUTORS — Trustee—Death of.—— Upon the death of a testamentary trustee intestate, his office, so far as relates to the personalty, passes to his administrator.—*Gulick v. Bruere*, N. J. Ct. Err. & App., March Term, 1887; 9 Atl. Rep. 719.

117. EXECUTORS—Widow—Children—Allowance—Title. ——The Utah law, allowing small estates to be assigned by the probate court for the use of the widow and minor children, does not make the widow to whom land is so assigned, where there are minor children, the sole owner thereof to the exclusion of the children, and she cannot convey it absolutely.—*Rands v. Brain*, S. C. Utah, June 13, 1887; 14 Pac. Rep. 129.

118. FALSE REPRESENTATIONS—Liability.—— One injured by false representation may maintain an action against the offender, though the latter was not benefited and did not collude with the one benefited.—*Endsley v. Johns*, S. C. Ill., May 12, 1887; 12 N. E. Rep. 247.

119. FORCIBLE ENTRY AND DETAINER—Justices—Appeal —County Court.——In Colorado, justices of the peace have jurisdiction throughout the county in actions for forcible entry and detainer, and an appeal from them lies only to the county court.—*Raynolds v. Larkin*, S. C. Colo., May 24, 1887; 14 Pac. Rep. 114.

120. FRAUD— Misrepresentation — Materiality. —— A statement that an enterprise is conducted by a company having a cash capital of $2,000, and that a named man of note is a member, if untrue is material, in an action by a party induced in part or altogether by such false representations to subscribe $100 to the enterprise. —*Lebbey v. Ahrens*, S. C. S. Car., March 14, 1887; 2 S. E. Rep. 387.

121. GIFT—Delivery—Evidence. —— In a suit of replevin for a piano, which the oldest daughter claims as bought for her by her father, and the mother claims it as purchased for all the children by her deceased husband, the declarations of the deceased being admitted in evidence, the question is for the jury to decide.—*Swab v. Miller*, S. C. Penn., May 23, 1887; 9 Atl. Rep. 667.

122. GUARANTY—Surety—Note—Payment — Practice — Witness.——A surety has an absolute right to pay the note when due, and proceed to sue his principal upon it. A written contract to protect the surety by a third party is an obligation to pay the debt for his benefit when due. The giving of a note in due commercial form in satisfaction of an antecedent debt is a payment thereof. Recalling a witness who has been examined and dismissed is a matter for the discretion of trial court.—*Nixon v. Beard*, S. C. Ind., May 24, 1887; 12 N. E. Rep. 131.

123. GRAVEL ROADS—Assessment — Repetition.—— If the first assessment made on the property owners to pay for the construction of a gravel road does not suffice, the county commissioners may, on their own motion, order an additional one, but for the assessing thereof must refer it to the viewers.—*Montgomery Co. v. Fullen*, S. C. Ind., May 27, 1887; 12 N. E. Rep. 298.

124. GRAVEL ROADS—Statute—Construction—Jurisdiction—Bond—Appeal.——The statutes of Indiana relating to gravel and macadamized roads construed. Objections to the bond required by the statute in such proceedings must be made in the commissioners' court, or they will not be considered on appeal.—*Robinson v. Ripley*, S. C. Ind., May 25, 1887; 12 N. E. Rep. 141.

125. HIGHWAYS — Establishment — Jurisdiction. —— Where a petition for a highway does not disclose the names of the owners of the land through which it is to pass, and the record does not show that a majority of the tax-payers of the district according to the last assessment roll have signed the petition, the proceedings are void.—*Godchaux v. Carpenter*, S. C. Nev., June 2, 1887; 14 Pac. Rep. 140.

126. HIGHWAYS—Laying Out—Injunctions—Appeal.—— Proceedings of county courts in appropriating property for laying out public roads are subject to appeal, and an injunction will not lie.—*Chicago, etc. R. Co. v. Maddox*, S. C. Mo., May 16, 1887; 4 S. W. Rep. 417.

127. HUSBAND AND WIFE—Conveyance by Wife.—— No contract for the conveyance of real estate or any interest therein by a married woman, except mortgages for purchase money and leases for not more than three years, is not valid, unless the husband join therein.—

Gregg v. Owens, S. C. Minn., June 1, 1887; 33 N. W. Rep 216.

128. HUSBAND AND WIFE—Community Property—Evidence—Burden of Proof.——In an action by a wife setting up that community property had been sold for her husband's debt, the burden of proof is upon her to show that the debt was not a community debt. She cannot set up by a supplemental complaint the fact that she had been divorced and had bought her husband's interest in the land.—*Andrews v. Andrews*, S. C. Wash. Ter., Jan. 27, 1887; 14 Pac. Rep. 68.

129. HUSBAND AND WIFE—Conveyance—Limitations. ——The signing and acknowledging of a deed by a married woman, which conveys her own land, wherein her husband is the sole grantor and nothing therein shows that he is married, will not pass her estate, but his acknowledgment will pass his interest as tenant by the curtesy initiate, and the statute of limitations will begin to run against her at his death.—*Bradley v. Missouri, etc. R.*, S. C. Mo., March 21, 1887; 4 S. W. Rep. 427.

130. HUSBAND AND WIFE—Conveyances—Tenure.—— Since 1853, a conveyance to a husband and wife does not create a tenancy in common. She holds one-half of the estate in common with her husband, the right of survivorship still exists.—*Buttlar v. Rosenblath*, N. J. Ct. Err. & App., March Term, 1887; 9 Atl. Rep. 695.

131. HUSBAND AND WIFE—Conveyance to Wife—Validity.— ——Where there is no fraud and the rights of creditors or subsequent purchasers do not intervene, a husband can convey real estate directly to his wife.—*Furrow v. Athey*, S. C. Neb., June 8, 1887; 33 N. W. Rep. 208.

132. HUSBAND AND WIFE—Mortgage—Contract—Note. ——In South Carolina, the mortgage by a wife of her separate property to secure a debt of her husband in which she has no interest, is void. She can only contract in the interest of her separate estate, and a mortgage or the note it secures, being the debt of the husband, is not such a contract.—*Aultman v. Rush*, S. C. S. Car., April 20, 1887; 2 S. E. Rep. 402.

133. INJUNCTION — Appeal — Supersedeas—Contempt—Bill of Exceptions.——An injunction is not deprived of its force by an appeal with *supersedeas*. One who, after such appeal, disobeys an injunction, may be punished for contempt. A bill of exceptions should state that it contains all the evidence given in the cause.—*Central, etc. Co. v. State ex rel.*, S. C. Ind., May 12, 1887; 12 N. E. Rep. 136.

134. INJUNCTION—County Commissioners—Tax-payer. ——A tax-payer may enjoin the county commissioners from delivering a deed to county real estate, when the resources of the county would be thereby squandered. —*McCord v. Pike*, S. C. Ill., June 17, 1887; 12 N. E. Rep. 239.

135. INJUNCTION—County Officers—Payments.——An injunction will not lie to restrain the board of supervisors from paying alleged illegal claims.—*Merriam v. Supervisors of Yuba Co.*, S. C. Cal., June 13, 1887; 14 Pac. Rep. 137.

136. INJUNCTION—Trespass byCorporation.—— An injunction does not lie to prevent a repetition of a trespass by a corporation, unless it is shown that sundry persons, each standing on his own ground, controvert the same right, and that their acts work irreparable mischief.—*Roebling Sons' Co. v. First Nat'l Bank*, U. S. D. C. (W. Va.), January Term, 1887; 30 Fed. Rep. 744.

137. INSOLVENCY—Attachment—Receiver.——In proceedings under § 2, ch. 148, Laws 1881, against an insolvent debtor, the court cannot, in the order of appointing a receiver, vacate prior attachments or garnishments of the debtor's property.—*Shakopee, etc. Co. v. Cole*, S. C. Minn., June 18, 1887; 33 N. W. Rep. 219.

138. INSURANCE—Additional Insurance—Forfeiture for Other Insurance.——A complaint is good on demurrer which states that it was agreed that plaintiff might take out additional insurance, alleging that defendant failed to insert the agreement in the policy. When insurance is appertained as so much on building, so much on furniture, and the policy prohibits further insurance without consent, further insurance on the building avoids the whole policy.—*Haven v. Home, etc. Co.*, S. C. Ind., May 24, 1887; 12 N. E. Rep. 137.

139. INSURANCE — Life—Habitual Intemperance.—— The meaning of the words "habitually intemperate" in a policy of life insurance, is a question for the jury rather than for the court. A single or occasional excess does not make a man an habitual drunkard, but a habit of indulging periodically in excessive fits of intemperance with increasing frequency and violence, is ground to support such a finding.—*Northwestern, etc. Co. v. Muskegon, N. B.*, U. S. S. C., May 23, 1887; 7 S. C. Rep. 1221.

140. INTOXICATING LIQUORS—License—Municipal Corporations.——Municipal corporations, under the general power given them therefor, may regulate the sales of intoxicating liquors in quantities larger than those for which the general law provides. The fee, therefor, is the price of a privilege, and no question as to its excessiveness can arise.—*Dennehy v. City of Chicago*, S. C. Ill., May 12, 1887; 12 N. E. Rep. 227.

141. INTOXICATING LIQUORS—Sales to Minors—Parent. ——Under the North Carolina law it is no defense, to an indictment for selling intoxicating liquors to a minor, to show that his father authorized the sale.—*State v. Lawrence*, S. C. N. Car., May 9, 1887; 2 S. E. Rep. 367.

142. JUDICIAL SALE — Caveat Emptor — Resale.—— When a judicial sale has been made and confirmed, the purchaser cannot refuse to pay deferred installments, because others assert title to the property, no fraud nor mutual mistake being alleged.—*Redd v. Dyer*, S. Ct. App. Va., May 19, 1887; 2 S. E. Rep. 288.

143. JUDGMENT — Appeal — Correction. ——When an allegation in a complaint is amended pending the suit, a judgment made on the first allegation should be modified so as to conform to the amendment.—*Wyckoff v. Vliet*, N. J. Ct. Err. & App., March Term, 1887; 9 Atl. Rep. 680.

144. JUDGMENT—Foreign Judgment — Authentication. ——It is not necessary to the authentication of a judgment of another State, that the governor shall certify that the judge who attests the record and the official character of the clerk is a judge duly commissioned, etc.—*Kingsley v. Rumbough*, S. C. N. Car., April 25, 1887; 2 S. E. Rep. 174.

145. JUDGMENT—Insane Person — Estoppel—Redemption. ——A judgment against an insane person, obtained by an innocent holder of commercial paper, obtained from the lunatic by the fraud of the payee, will be set aside on the suit of the guardian of the lunatic subsequently appointed, and he will not be estopped by having redeemed land sold under such judgment.—*Dickerson v. Davis*, S. C. Ind., May 24, 1887; 12 N. E. Rep. 145.

146. JUDGMENT — Lien — Priority.——A judgment on which execution was taken out years before the debtor took title to the land, will, in case of a sale under an execution issued on a subsequent judgment, be postponed, both to the latter judgment and a mortgage intervening between the two judgments.—*South Amboy B. & L. Ass'n. v. Murphy*, N. J. Ct. Ch., May 16, 1887; 9 Atl. Rep. 500.

147. JUDGMENT — Opening — Judicial Discretion.—— When a court refuses to open a judgment in an amicable action, where the defendant appeared and confessed judgment, the appellate court will not review such action.—*Kerr's Appeal*, S. C. Penn., May 23, 1887; 9 Atl. Rep. 670.

148. JUDGMENT — Res Adjudicata — Collateral Attack. ——One who was a party to a decree ordering a sale cannot, in a suit against a purchaser under it, attack the decree collaterally by showing that part of the land was included in the decree by mistake. It is *res adjudicata* as to him.—*Jones v. Coffey*, S. C. N. Car., April 26, 1887; 2 S. E. Rep. 165.

149. JUDGMENT — Res Adjudicata — Crops.——An action of forcible entry and detainer by a landlord against a tenant does not necessarily involve the title to corn grown thereon by the tenant, and is no bar to suits

relative thereto.—*Waite v. Teeters*, S. C. Kan,, June 11, 1887; 14 Pac. Rep. 146.

150. JUDGMENT — Res Adjudicata — Master's Report—Equity—Pleading—Mortgage—Life Insurance.——Where a bill is filed by a husband against his divorced wife, and after his death she files a supplemental cross-bill, claiming rents and profits of the lands in question: *Held*, that the reversal upon appeal of the decree dismissing the supplemental cross-bill and approving the master's report, the subsequent report of the master finding the rents and profits on a different basis, is not *res adjudicata* by the former report. A mortgagee in possession is usually only liable for actual receipts. The proceeds of a husband's insurance on his life for his wife belong to her and not to his estate at his death.—*Pinneo v. Goodspeed*, S. C. Ill., May 12, 1887; 12 N. E. Rep. 196.

151. JUDGMENT — Res Adjudicata — Privies. ——The judgment in a proceeding by a mortgagee of land to set aside a tax-deed thereof is not binding on the mortgagor, when he is in no way a party to it.—*Shattuck v. Bascom*, N. Y. Ct. App., March 8, 1887; 12 N. E. Rep. 283.

152. JUROR—Qualification—Practice.——It is error to exclude questions asked designed to bring out the character of the opinion which a juror who has said that he entertained an opinion of the defendant's guilt or innocence.—*People v. Brown*, S. C. Cal., May 31, 1887; 14 Pac. Rep. 90.

153. JURY—Trial—Waiver. —— A party waives his right to a jury trial by failing to reserve it or to demand it when a reference is ordered.—*Grant v. Hughes*, S. C. N. Car., May 9, 1887; 2 S. E. Rep. 339.

154. JUSTICE'S COURT—New Trial.—— A justice has no right to set aside the verdict of a jury and grant a new trial.—*McCook v. Moore*, S. C. Ga., Feb. 1, 1887; 2 S. E. Rep. 473.

155. JUSTICE—Rulings—Petition in Error.——A plaintiff, on whose motion a justice of the peace has dismissed the action as to any of the defendants, cannot assign such ruling as error in a petition in error.—*Sawyer v. Forbes*, S. C. Kan., June 11, 1887; 14 Pac. Rep. 148.

156. LARCENY—Charge—Sufficiency of.——The crime of larceny is sufficiently charged when it is stated that the property stolen was taken from the possession of the person who actually had it, although its ownership may have been erroneously stated, as, for instance, describing the property of a husband as that of his wife.—*People v. Watson*, S. C. Cal., May 31, 1887; 14 Pac. Rep. 97.

157. LEGACIES—Rights of Creditors—Contribution.—— A creditor, when it is necessary to procure satisfaction of his claim against a decedent, may pursue a legacy, even though it has been paid over to the legatee. He may collect the full amount of his claim from a sum of money in court due one legatee, who may be out of the jurisdiction of the court.—*Bermingham v. Forsythe*, S. C. S. Car., March 19, 1887; 2 S. E. Rep. 286.

158. LIBEL—Malice—Privileged Communication—Mercantile Agency.—— In libel, malice signifies only a wrongful act done intentionally without just cause or excuse. A communication made *bona fide* upon any subject in which a party has an interest or toward which he has a duty to one similarly situated, is privileged, but the party may be liable if he gives improper publicity to the communication. The report of a mercantile agency on the character and standing of a trader, is privileged, when communicated only to those of its patrons who have a special interest in the information.—*King v. Patterson*, N. J. Ct. Err. & App., March Term, 1887; 9 Atl. Rep. 705.

159. LIBEL — Privileged Communications — Discharge Lists.——The discharge list, which it is the custom and duty of each division agent of a railroad company to send to his fellow-agents to warn them of the men discharged, are within the rule of qualified privilege.—*Bacon v. Michigan, etc. R. Co.*, S. C. Mich., June 9, 1887; 33 N. W. Rep. 181.

160. LIEN—Decree—Partial Reversal.——A partial reversal of a decree in equity does not destroy the lien of the part left unaltered.—*Thompson v. Chapman*, S. C. App. Va., April 21, 1887; 2 S. E. Rep. 273.

161. LIEN—Mechanic's Lien—Intervenors.——When a mechanic's lien affects the whole of the property in question, and there are other lienholders intervening, a decree ordering a sale of the estate and the distribution *pro rata* of the proceeds among the several claimants, is erroneous.—*Bassick, etc. Co. v. Scholfield*, S. C. Colo., May 18, 1887; 14 Pac. Rep. 65.

162. LIFE ESTATE—Contingent Remainder—Deed.—— When an estate is conveyed to A for life, with remainder to her children, by her husband R, living at her death, and the representatives of any then deceased, and her husband has died, leaving her two children a perfect title, cannot be made to the property during the life of A and her children, as it is uncertain in whom the remainder will vest.—*Overman v. Sims*, S. C. N. Car., May 21, 1887; 2 S. E. Rep. 372.

163. LIMITATIONS — Of Actions — Adverse Possession. ——To constitute such adverse possession as will work a disseizin of the lawful owner, the occupancy must be actual and visible, but what will constitute occupancy depends upon the nature and situation of the property and the uses to which it can be applied.—*Murphy v. Doyle*, S. C. Minn., June 14, 1887; 33 N. W. Rep. 220.

164. LIMITATIONS—Of Actions—Revival of Debt.—— Where a debtor in a letter speaks of "the debt I owe you," and regrets not being able to pay any part of it, such acknowledgment is sufficient to remove the bar of the statute.—*Chidsey a. Powell, Ex.*, S. C. Mo., May 16, 1887; 33 N. W. Rep. 446.

165. LIMITATIONS—Bond — Payment.——Payment of the annual interest on a joint and several bonds by the principal, keeps it alive as to the surety as well.—*Dickson v. Gourdin*, S. C. S. Car., April 11, 1887; 2 S. E. Rep. 303.

166. LIMITATIONS—Notes — Non-residents.——A note given in this State, February 23, 1876, by a party, who only came to the State two or three times each year on business, and then remained only one or two days on each visit, was not barred October 28, 1886, when suit was brought.—*Armfield v. Moore*, S. C. N. Car., May 16, 1886; 2 S. E. Rep. 347.

167. LIMITATIONS — Bankruptcy—Adverse Possession. ——An assignee in bankruptcy must bring an action for land held adversely within two years thereafter, and the same limitation applies to one purchasing from the assignee.—*Wisner v. Brown*, U. S. S. C., May 27, 1887; 7 S. C. Rep. 1156.

168. LIMITATIONS — Payment — Presumption — Judgment.——A payment made by one of four joint and several makers of a note within the prescribed period, rebuts the presumption of payment in full as to the others, and precludes them from pleading the statute of limitations. The same result does not follow if a judgment is obtained against one of the several debtors.—*Hall v. Woodward*, S. C. S. Car., April 21, 1887; 2 S. E. Rep. 401.

169. LIMITATIONS — Promissory Note — Bar. —— A promissory note is bound in three years in the District of Columbia, under the Maryland act of 1715.—*Shepherd v. Thompson*, U. S. S. C., May 27, 1887; 7 S. C. Rep. 1229.

170. LIMITATIONS—Statute of — Homestead — Laches. —— Construction of California statute of limitations. When it will run against a claim of homestead. When ignorance will not excuse laches.—*Hecht v. Slaney*, S. C. Cal., May 28, 1887; 14 Pac. Rep. 88.

171. LIMITATIONS—Tax-deeds—Absence.——The limitation as to the right of action against the holder of a tax-deed runs, though such holder be out of the State. —*Beebe v. Doster*, S. C. Kan., June 11, 1887; 14 Pac. Rep. 150.

172. MANDAMUS — Levy of Tax—Judgment.——In a proceeding by *mandamus* to compel a county court to levy a tax to pay a judgment, the respondent cannot, by its return, allege any facts inconsistent with the judgment, though it was obtained by default.—*United States v. Knox Co.*, U. S. S. C., May 27, 1887; 7 S. C. Rep. 1171.

173. MALICIOUS PROSECUTION—Probable Cause—Nonsuit.——A nonsuit is erroneously entered when, in an action for malicious prosecution for indecent exposure, plaintiff proves there was no such exposure, and that he did not know that he was in sight of any one. The case should have been submitted to the jury.—*Simmons v. Brinkmeyer*, S. C. Cal., June 9, 1887; 14 Pac. Rep. 101.

174. MARITIME LIENS—Formal Arrest—Lienors Without Notice.——When a vessel is in the custody of a court under formal arrest only, and by the consent of the parties is allowed to engage in her usual business, and to incur maritime obligations toward parties having no notice of her arrest, no marshal, or deputy, being on board or in actual possession, the rule that liens cannot be acquired on vessels while in custody does not apply. —*The Young America*, U. S. D. C. (N. Y.), May 6, 1887; 30 Fed. Rep. 789.

175. MARRIED WOMAN—Deed to Husband—Statute.—Under the law of North Carolina, a married woman making a deed to her husband must be examined separately, and the officer's certificate must state his conclusion that the conveyance is not unreasonable or injurious to her. The omission of such conclusion renders the deed void.—*Sims v. Ray*, S. C. N. Car., May 21, 1887; 2 S. E. Rep. 443.

176. MASTER AND SERVANT—Contributory Negligence—Coupling Cars.——When an experienced employee, in coupling cars at a sharp curve in the track, stood on the inside of the draw-bar while coupling and was crushed to death, whereas if he had stood on the outside he would have been out of danger, he was guilty of contributory negligence, and his employer is not liable.—*Tuttle v. Detroit, etc. R. Co.*, U. S. S. C., May 23, 1887; 7 S. C. Rep. 1166.

177. MASTER AND SERVANT—Fellow-servant.——The foreman and a member of the wrecking crew of a railroad company are not fellow-servants, where the crew employed by the foreman are under his command and must obey his orders.—*Wabash, etc. R. Co. v. Hawk*, S. C. Ill., June 17, 1887; 12 N. E. Rep. 253.

178. MASTER AND SERVANT—Fellow-servant.——An engineer who has brought a train into the yard and whose duty it is to take the engine to the round-house, is no fellow-servant of a car inspector whose duty it is to go on the cars as soon as stopped and inspect them. —*Chicago, etc. R. Co. v. Hoyt*, S. C. Ill., May 12, 1887; 12 N. E. Rep. 225.

179. MASTER AND SERVANT—Hire—Notice.——A hires B for no definite sum. B signed a receipt for the first payment of wages, which embodied a provision, that fourteen days notice must be given by employees of their intention to quit, or they will forfeit wages due then at the time they quit. B quit after a notice of a day and a half. *Held*, he was bound by the agreement. —*Pottsville Iron & Steel Co. v. Good*, S. C. Penn., May 16, 1887; 9 Atl. Rep. 497.

180. MASTER AND SERVANT—Independent Contractor—Liability.——Where one lets work to another, looking only at the end desired, and the other is to use such means as he deems expedient to accomplish such end, the latter is an independent contractor, and the employer is not liable to others for his negligent acts.—*Wabash, etc. R. Co. v. Farver*, S. C. Ind., May 26, 1887; 12 N. E. Rep. 296.

181. MASTER AND SERVANT—Machinery—Minor.——A master is not required to buy the latest and best machinery, but only such as is reasonably safe and suitable. Where a minor is employed, the master must see that he fully understands and appreciates the dangers of the work, if, after instructions, he does not appreciate the dangers, the master keeps him at such work at his own risk.—*Hickey v. Taaffe*, N. Y. Ct. App., March 8, 1887; 12 N. E. Rep. 286.

182. MECHANIC'S LIEN—Statute—Contractors—Appeal. ——Construction of Illinois statutes relative to mechanics' liens, the rights of contractors under those statutes and provisions of the same relative to appeals. —*Martin v. Swift*, S. C. Ill., May 12, 1887; 12 N. E. Rep. 201.

183. MORTGAGES—Assignment—Consideration.——A mortgage is executed by a man and his wife to a bank, which assigned it to A, who assigned to B, C and D. *Held*, B, C and D could recover in an action on the mortgage brought in the name of the bank to their use, though neither the bank nor H paid any consideration, if the mortgage was made and left with A for him to raise money on it for the mortgagors, and B, C and D paid their money in good faith, and this, whether the money raised by A was applied as directed by the mortgagors or not.—*Thompson v. Humbold Deposit Co.*, S. C. Penn., May 9, 1887; 9 Atl. Rep. 511.

184. MORTGAGE—Construction of Assignment.——A, holding a mortgage for $13,860, assigned "the amount of $10,000 of the same out of the first moneys to become due and payable according to the terms of the said mortgage." B assigned his interest to C. *Held*, that the assignment was designed to give a priority of payment over the residue of the money secured by the mortgage. —*Appeal of Thayer*, S. C. Penn., May 9, 1887; 9 Atl. Rep. 498.

185. MORTGAGE—Equity of Redemption—Release.—— A mortgage, in South Carolina, conveys no estate whatever, and is simply a lien on the land, and a release of the equity of redemption, without satisfactory proof of a covenant and intention to keep the mortgage open, does not put title in the mortgagee of the date of the mortgage so as to cut out an intervening judgment against the mortgagor.—*Navassa Guano Co. v. Richardson*, S. C. S. Car., April 19, 1887; 2 S. E. Rep. 307.

186. MORTGAGE—Evidence of Payment—Decree.——In an action to foreclose a mortgage brought by the administrator of the assignee of the mortgage, the defendant claimed that the intestate had agreed to discharge the mortgage in consideration of the defendant having furnished him a home for the rest of his life: *Held*, that the claim would be sustained, but the defendant having already collected a claim for such services from the estate, and that the amount so collected would be decreed a lien on the mortgaged premises.—*George v. Ludlow*, S. C. Mich., June 9, 1887; 33 N. W. Rep. 169.

187. MORTGGAGE—Fraudulent Preferences—Assignment for Creditors.——A mortgage which embraces all the property of an insolvent debtor, and has the effect of fraudulently preferring one creditor over another, is not void, under the South Carolina law, relative to assignments for the benefit of creditors.—*Lamar v. Pool*, S. C. S. Car., April 19, 1887; 2 S. E. Rep. 322.

188. MORTGAGE—Payment—Question of Fact.——*Held*, no error for the court, in an action of *scire facias sur* mortgage, where the defense was payment, to leave the question of payment as one of fact to the jury.—*German Ins. Co. v. Davenport*, S. C. Penn., May 9, 1887; 9 Atl. Rep. 517.

189. MORTGAGE—Purchase of Premises—Merger.—— The purchase of the mortgaged premises by the mortgagee, but not by foreclosure, is, in South Carolina, in the absence of a covenant at the time to keep the mortgage open, a merger, and lets in a judgment subsequent to the mortgage.—*Bleckley v. Branyan*, S. C. S. Car., April 19, 1887; 2 S. E. Rep. 319.

190. MORTGAGE—Release—Rescission.—— Where a mortgagee releases a mortgage upon condition that the mortgagor will pay to him the rents and profits of the property for his life and upon other conditions, all of which the mortgagor fails to perform, the mortgagee is entitled to rescind the release and foreclose the mortgage.—*Henschel v. Mamero*, S. C. Ill., May 12, 1887; 12 N. E. Rep. 203.

191. MUNICIPAL CORPORATIONS—Assessments—Validity.——Under the charter of St. Louis, assessments of benefits upon the opening of streets must be assessed against each lot separately.—*City of St. Louis v. Johansen*, S. C. Mo., May 16, 1887; 4 S. W. Rep. 417.

192. MUNICIPAL CORPORATIONS—By-laws.——By-laws of a municipal corporation, authorized by its charter, have the effect of special laws of the legislature, and supersede the general law within the territorial limits of

such corporation.—*St. Johnsburg v. Thompson*, S. C. Vt., May 28, 1887; 9 Atl. Rep. 571.

193. MUNICIPAL CORPORATIONS — Officers — Appointment.——Under the law of 1884, the mayor of New York can appoint the excise commissioners without the approval of the board of aldermen.—*People v. Andrews*, N. Y. Ct. App., March 1, 1887; 12 N. E. Rep. 274.

194. MUNICIPAL CORPORATION—Ordinance— Invalidity. —— A town ordinance which imposes a fine of not more than five dollars and one dollar for every day the party shall leave the duty unperformed, leaves the final penalty uncertain in amount, and is void.—*State v. Wright*, S. C. N. Car., May 27, 1887; 2 S. E. Rep. 180.

195. MUNICIPAL CORPORATIONS — Policeman — Special Duty—Payment.——Where a railroad has a policeman assigned to its depot on its request and on its promise to pay two thirds of his salary, which it pays directly to him for some time, he can sue the railroad for arrears of his salary.—*Porter v. Richmond, etc. R. Co.*, S. C. N. Car., May 21, 1887; 2 S. E. Rep. 374.

196. MUNICIPAL CORPORATIONS—Streets—Liability. —— In the absence of a statute so declaring, municipal corporations are not liable to persons injured by reason of the defective condition of the streets.—*City of Arkadelphia v. Windham*, S. C. Ark., May 7, 1887; 4 S. W. Rep. 450.

197. MUNICIPAL CORPORATIONS—Streets.——The town council of a borough has the power to open a street laid down in the general plan of the town, though in so doing a street not on the plan, but which has become so under the general laws of Pennsylvania, is closed up. *Appeal of Commonwealth*, S. C. Penn., May 9, 1887; 9 Atl. Rep. 254.

198. NEGLIGENCE—Master and Servant — Contributory Negligence—Evidence.——The servants of a carrier who slide a heavy trunk on an icy platform against a person in full view are guilty of negligence, for which the carrier is liable. One who goes to a station to see friends off is not guilty of contributory negligence in standing a few minutes to see the train off. Declarations of present pain may be proved by those who heard such declarations.—*Atchison, etc. Co. v. Johns*, S. C. Kan., June 14, 1887; 14 Pac. Rep. 237.

199. NEGLIGENCE—Railroad — Presumption. —— The fact that a railroad crossing is a place of danger and a warning to a passer to be vigilant and careful, does not raise a presumption in case of collision that the person injured did not look or listen, or that he heedlessly disregarded the knowledge thus obtained.—*Guggenheim v. Michigan, etc. R. Co.*, S. C. Mich., June 9, 1887; 33 N. W. Rep. 161.

200. NEGLIGENCE— Practice — Evidence — Railroad — Trial.——A motion by defendant to exclude evidence as incompetent to establish negligence, does not admit the truth of such evidence. It is negligence in a railroad to run an irregular train at unexpected times across a public highway at high speed and without signals.—*Roberts v. Alexandria, etc. Co.*, S. C. App. Va., May 12, 1887; 2 S. E. Rep. 518.

201. NEW TRIAL—Statute — Prohibition.——Construction of California statutes regulating procedure in new trials. When supreme court will issue writ of prohibition.—*White v. Superior Court*, S. C. Cal., June 7, 1887; 14 Pac. Rep. 87.

202. PARTITION — Community Property.——When a man dies leaving community property, of which his surviving wife owns one-half, and the whole property is partitioned equally between his seven children by a former wife and his two children by the surviving wife, the last children may have a repartition, by which the husband's half is divided between his nine children, and and the wife's half between her two children.—*Grigsby v. Peak*, S. C. Tex., May 10, 1887; 4 S. W. Rep. 474.

203. PARTNERSHIP—Firm and Individual Creditors—Execution—Subrogation.——An execution against all the members of a firm for a personal (not firm) debt, will carry the property of assets sold under it. In such a case a sale which exhausts the firm assets abrogates the rights of firm creditors, who can only claim satisfaction out of firm assets on the principle of subrogation, and this cannot be applied when the firm property has been exhausted by a legal claim.—*Saunders v. Reilly*, N. Y. Ct. App., March 8, 1887; 12 N. E. Rep. 170.

204. PARTNERSHIP — Powers — Sealed Instruments — Pleadings—Amendments.——The signing of the partnership name with a seal attached by one partner will not bind the partnership or a sealed instrument without previous authority from, or subsequent ratification by his co-partner. Plaintiff should be allowed to amend his complaint so as to sue on the open account instead of on the sealed notes given therefor.—*Sibley v. Young*, S. C. S. Car., April 19, 1887; 2 S. E. Rep. 314.

205. PATENTS—Inventive Genius—Novelty.——An improvement in fire-proof flooring, though not involving a high degree of inventive faculty, but whose utility is proven, constitutes a patentable novelty.—*Fryer v. Mutual, etc. Co.*, U. S. C. C. (N. Y.), April 13, 1887; 30 Fed. Rep. 787.

206. PATENTS —Novelty — Design.——To transfer to rubber an effect or impression on to the eye, produced on other materials by contrast or variation of light and shade, is no novelty which will sustain a design patent. —*N. Y. Belting Co. v. N. J. Rubber Co.*, U. S. C. C. (N. Y.), April 13, 1887; 30 Fed. Rep. 782.

207. PATENTS—Patentability.——A method for inserting and supporting artificial teeth, altering former unsuccessful methods and supplying a form of attachment, is an invention for which a patent will be sustained, though former methods may have pointed out the way and been utilized to perfect the improvement. —*International, etc. Co. v. Richmond*, U. S. C. C. (Conn.), Feb. 21, 1887; 30 Fed. Rep. 775.

208. PLEADING — Amendment—Statute.——Under the statute law of North Carolina, it is competent to make an additional party plaintiff. The statute permits such changes and amendments when it does not appear that any defenses are thereby taken away which could be set up in a new action.—*Kron v. Smith*, S. C. N. Car., May 27, 1887; 2 S. E. Rep. 532.

209. PLEADING—District Attorney—Refusal to Act.—— When a tax-payer files a suit in behalf of a county, his complaint must allege facts showing a refusal or neglect on the part of the district attorney to bring suit.—*Hedges v. Dam*, S. C. Cal., June 13, 1887; 14 Pac. Rep. 183.

210. PLEADING — Trover—Value—Damages.——In an action of trover the complaint need not allege the value of the property, provided there is a proper allegation as to the amount of plaintiff's damages.—*Brunswick-Balke Co. v. Brackett*, S. C. Minn., June 1, 1887; 33 N. W. Rep. 214.

211. PLEDGE—Application—Note.——When A signs a note for the accomodation of B, he cannot apply, nor authorize another to apply, as an indemnity against that note, a pledge previously given to him by B, as an indemnity against a different liability.—*Anderson v. Sims*, S. C. Tex., May 10, 1887; 4 S. W. Rep. 471.

212. POOR LAWS — Funeral Expenses—Liability.—— A county is not liable for funeral expenses of a poor person, unless a previous adjudication of property has been had.—*Clarke Co. v. Huie*, S. C. Ark., May 14, 1887; 4 S W. Rep. 452.

213. POOR LAWS—Settlement—Residence.——A settlement under the poor-law act requires a continuous residence for one year, but absences on business or pleasure, with the continued intent to return when the purpose of the absence is accomplished, do not break the residence.—*Tp. of Eatontown v. Tp. of Shrewsbury*, N. J. Ct. Err. & App., March Term, 1887; 9 Atl. Rep. 718.

214. POOR AND POOR LAWS—Settlement—Statute—Construction.——Poor laws of Massachusetts construed. When persons honorably discharged from the naval service of the United States, does *not* acquire a settlement thereby.—*City of Cambridge v. Inhabitants, etc.*, S. J. C. Mass., May 12, 1887; 12 N. E. Rep. 188.

215. PRACTICE — Appeal — Bond —Paying Costs—Justices.——The failure to pay the costs of an appeal

from a justice of the peace is no ground for dismissing the appeal. On motion to dismiss an appeal for lack of authority for agent to execute the appeal bond for the appellant, a power of attorney, under seal, should be produced, and, if the bond is adjudged insufficient, an order should be made requiring a proper bond to be filed at a certain time, or that the appeal be dismissed. —*Schofield v. Felt*, S. C. Colo., June 15, 1887; 14 Pac. Rep. 128.

216. PRACTICE—Cost-bond—Dismissal—Waiver. ——A non-resident plaintiff must, before he sues, file a cost-bond, in Colorado, or the defendant can have the case dismissed, though a bond has been filed; the filing of an answer after the overruling of a motion to dismiss for lack of a cost-bond is not a waiver of the motion.—*Edgar G. & S., etc. Co. v. Taylor*, S. C. Colo., May 24, 1887; 14 Pac. Rep. 113.

217. PRACTICE — Evidence — Parol — Warranty.—— Where defendant, in a suit for the price of goods sold, pleads a breach of warranty, it is error, where a written warranty is proven, to all parol evidence of another and different warranty to be given.—*Barrett v. Wheeler*, S. C. Iowa, June 13, 1887; 33 N. W. Rep. 230.

218. PRACTICE — Exceptions — Commissioner — Recommittal—Waiver.——After a commissioner to prove exceptions has reported, the supreme court can recommit the report with directions to report the evidence. After the report is filed, it is too late to object that the petition therefor was not verified.—*Kaiser v. Alexander*, S. J. C. Mass., Jan. 12, 1887; 12 N. E. Rep. 209.

219. PRACTICE—Exceptions—Form.——Where exceptions to instructions are only taken in a motion for new trial, they must specify the part of the charge or instruction objected to and the ground of the exception. —*Patterson v. Chicago, etc. R. Co.*, S. C. Iowa, March 2, 1887; 33 N. W. Rep. 228.

220. PRACTICE—Final Order—Justice—Error.——When a motion to vacate and discharge a garnishment after final judgment is denied by a justice of the peace, the matter may be taken to the district court on error.—*Carlyle v. Smith*, S. C. Kan., June 11, 1887; 14 Pac. Rep. 156.

221. PRACTICE — Justice — Error. —— A judgment, rendered in an action with a jury before a justice of the peace, cannot be reversed for errors on the trial when the evidence is not preserved in the record, upon proceedings in error to the district court.—*Thompson v. Post*, S. C. Kan., June 11, 1887; 14 Pac. Rep. 164.

222. PRACTICE—Justices—Rulings.——The erroneous exclusion or admission of evidence by a justice of the peace cannot be reviewed by petition in error.—*Hart P. N. Co. v. Scruggs*, S. C. Kan., June 11, 1887; 14 Pac. Rep. 145.

223. PRACTICE—Instruction—Duty of Pledgee.——A payee of a promissory note who receives of the maker other notes as collateral, is liable on them only for failure to present and give notice of non-payment, and then only to the extent of the damages suffered by the maker by such neglect, and an instruction that the duty is that of an indorser is erroneous.—*Kennedy v. Rosier*, S. C. Iowa, June 14, 1887; 33 N. W. Rep. 226.

224. PRACTICE—New Trial—Evidence.——A new trial will not be granted for newly-discovered evidence which is merely cumulative or impeaching evidence, or if no good excuse is given for not producing the evidence before.—*Pennsylvania Co. v. Nations*, S. C. Ind., May 28, 1887; 12 N. E. Rep. 309.

225. PRACTICE—Trial—Arguments. ——The error of allowing one attorney to make improper remarks in his address to the jury, is not cured by allowing a similar latitude to the opposing attorney.—*Gulf, etc. R. Co. v. Witte*, S. C. Tex., May 17, 1887; 4 S. W. Rep. 490.

226. PRINCIPAL AND AGENT—Collection of Debt—Gratuitous Services.—— Where one not in the business agrees, at the request of a friend, to endeavor to collect a debt for him gratuitously, he is not liable for loss without proof of negligence.—*Nixon v. Bogin*, S. C. S. Car., April 8, 1887; 2 S. E. Rep. 302.

227. PRINCIPAL AND AGENT—Notice to Agent.——A principal is only affected by the knowledge of his agent when acquired by the agent in the course of his employment.—*Barbour v. Wiehle*, S. C. Penn., May 9, 1887; 9 Atl. Rep. 520.

228. PROCESS—Pleading.——Where the original complaint does not disclose knowledge of the matters set up in the cross-complaint, it is necessary to issue process on the latter. Otherwise the issuance of such process is not necessary.—*Bevier v. Kahn*, S. C. Ind., May 28, 1887; 12 N. E. Rep. 169.

229. PROMISSORY NOTE—Indorser—Attachment—Release.——If the plaintiff in an attachment releases to an intervening claimant a part of the property attached, he therefore releases the indorser of the note on which the attachment was founded to the value of the property so released to the intervening claimant, provided the claim was made by collusion with the defendant and the plaintiff might have successfully resisted it.—*Twiggs v. Augusta, etc. Bank*, S. C. S. Car., April 20, 1887; 2 S. E. Rep. 398.

230. PROMISSORY NOTE—Purchaser for Value.——The existence of a pre-existing debt is a sufficient consideration, as between the parties for the transfer of collateral security by a debtor to his creditor, and if such creditor afterward surrender the collateral for a note signed by a number of sureties, he is a purchaser for value, and relieved of all defenses of which he had no notice, and so a surety who is sued on the note cannot set up that the name of another surety was forged.—*Des Moines Nat. Bk. v. Chisholm*, S. C. Iowa, June 14, 1887; 33 N. W. Rep. 234.

231. PUBLIC LANDS—Certificate Effect.——The statements in a land certificate issued by the Texas land commissioners are conclusive of the right of the person named to the land mentioned, but are not conclusive that his rights are not greater.—*Baker v. Maloney*, S. C. Tex., May 10, 1887; 4 S. W. Rep. 469.

232. PUBLIC LANDS—Des Moines River Grant.——The title of a settler on the public land above Raccoon Fork on the Des Moines river in the year 1861, said land having been withdrawn from sale, is inferior to a title derived from the State of Iowa after 1862.—*Bullard v. Des Moines, etc. R. Co.*, U. S. S. C., May 23, 1887; 7 S. C. Rep. 1149.

233. PUBLIC LANDS—Surveys—Certificates. —— The fact that the public lands were surveyed before the issue of the certificates, does not invalidate the appropriation of land thereunder as against the State or one having notice of such title.—*Thomson v. Houston, etc. R. Co.*, S. C. Tex., May 31, 1887; 4 S. W. Rep. 629.

234. PUBLIC LANDS — Survey — Abandonment. ——A warrant authorizing a survey of lands in Pennsylvania was issued in 1751 by the proprietaries, but no return of the survey to the land office was ever made. *Held*, that the right to a grant under the warrant must be presumed to have been abandoned, and the grantees of such party cannot show a private survey and a warrant issued thereon and payment thereunder.—*Paxton v. Griswold*, U. S. S. C., May 27, 1887; 7 S. C. Rep. 1216.

235. QUIETING TITLE — Legal Title—Possession.—— Though the Nebraska act provides that a party need not be in possession to bring an action to quiet title to land, yet the necessity for a legal title is not dispensed with.—*Frost v. Spitley*, U. S. S. C., May 2, 1887; 7 S. C. Rep. 1129.

236. RAILROADS—Killing Stock—Fences—Leased Line. ——If stock is killed by a railroad within the limits of a city, the railroad must show the animal got on the track where it was not allowed to fence. If the city had an ordinance against the running at large of stock, the railroad is only liable for gross negligence. When the road is operated under a lease, without special authority from the State, both companies are liable.—*Missouri, etc. R. Co. v. Dunham*, S. C. Tex., May 6, 1887; 4 S. W. Rep. 472.

237. RAILROADS—Killing Stock—Liability.——A rail-

road is not liable, under the statute, for injuries to stock caused by their running on the track through fright at a train, and being injured on a trestle but not by contact with the cars.—*Intern. etc. R. Co. v. Hughes*, S. C. Tex., May 17, 1887; 4 S. W. Rep. 492.

238. RAILROADS—Right of Way—Statute—Construction. ——Construction of general statutes of South Carolina, § 1551, prescribing proceedings by which railroads can acquire right of way over the lands of citizens.—*Ex parte Bennett*, S. C. S. Car., March 10, 1887; 2 S. E. Rep. 389.

239. RAILROADS—Penalty—Statute—Evidence—Appeal. ——Construction of Illinois statute giving a penalty to persons aggrieved by a railroad train running at unlawful speed through a town. Objection to evidence not made in the trial court cannot be made upon appeal.—*Chicago, etc. Co. v. People*, S. C. Ill., May 12, 1887; 12 N. E. Rep. 207.

240. RES ADJUDICATA—Mandamus—Action of Debt.—— An action of debt on a judgment against a town, whose effect would be to compel payment out of the general funds, is *res adjudicata*, where the same object was sought by a *mandamus*, which was refused, because such mode of payment is not lawful.—*Village of Hyde Park v. Corwith*, S. C. Ill., May 12, 1887; 12 N. E. Rep. 238.

241. SALE—Contract—Price.——Where one was to be paid for according to the percentage of zinc it contained when delivered, a determination of its moisture at a place sixty-two miles away from the place of delivery is no proper determination of its moisture at that place.—*Lehigh, etc. Co. v. Trotter*, N. J. C. Err. & App., March Term, 1887; 9 Atl. Rep. 694.

242. SALE—Place of—Intoxicating Liquor.——A firm had a license to sell liquor within the county, and through an agent took orders from a druggist in another county; the agent testified that the sales were not considered consummated until approved at headquarters, and the presumption being against a violation of the law: *Held*, that such sales were legal.—*Gross v. Scarr*, S. C. Iowa, June 13, 1887; 33 N. W. Rep. 223.

243. SALE—Transfer of Title—Debt.——Where A had cut and piled wood on B's land, and he agreed to turn over that wood to B in payment for wood he had cut from B's land, but it was also agreed that, if A came to B with the money, he was to have the wood, B can sue the railroad, which appropriated the wood, for its value.—*Texas, etc. R. Co. v. Beard*, S. C. Tex., May 10, 1887; 4 S. W. Rep. 483.

244. SCHOOLS — Teachers — Pay — Limitations.—— Counties must pay the claims of teachers in the public schools, under the act of April 2, 1883, and such claims are assignable. The legislature can require counties to pay outlawed accounts.—*County of Caldwell v. Crocket*, S. C. Tex., May 24, 1887; 4 S. W. Rep. 607.

245. SHERIFF—Receiver — Nonsuit.——It is a proper case for a nonsuit when a receiver claiming property under an assignment fails to make it appear that the goods sued for, seized by the sheriff under execution in favor of other persons, were the same goods conveyed in the assignment.—*Milling v. Sanders*, S. C. S. Car., March 10, 1887; 2 S. E. Rep. 386.

246. STATUTE—Practical Construction — County Commissioners.——The practical construction of a statute long acquiesced in and acted upon will control. The declarations of a member of a board of county commissioners, not made in open session, will not bind the board.—*Board, etc. Franklin County v. Bunting*, S. C. Ind., May 24, 1887; 12 N. E. Rep. 151.

247. SUBROGATION—Rule.——The law of subrogation is applied regardless of any contracted relation; it is not applied for a mere volunteer, but for one who has paid the debts of another to protect his own rights or to save his own property.—*McNeil v. Miller*, S. C. App. W. Va., March 26, 1887; 2 S. E. Rep. 335.

248. SURVEYS — Counties — Land — Districts.——The Texas act of 1866 did not attach Hardeman county to Jack county for surveying purposes.—*Cox v. Houston, etc. R. Co.*, S. C. Tex., May 6, 1887; 4 S. W. Rep. 455.

249. TAXATION—Deed—Requirements. ——A deed for taxes must show specifically that all the proceedings required by law had been taken; a general allegation is not sufficient.—*Moore v. Harris*, S. C. Mo., May 16, 1887; 4 S. W. Rep. 439.

250. TAXATION—Exemption — Charitable Purposes.—— A house purchased for the residence of the bishops of the Methodist Episcopal Church, who may from time to time reside in St. Louis, is exempt from taxation. —*Bishops' Residence Co. v. Hudson*, S. C. Mo., May 16, 1887; 4 S. W. Rep. 435.

251. TAXATION—Exemption— School Houses.——The real estate of an institution incorporated under Laws N. Y., 1838, as a colored orphan asylum, for the object of maintaining and providing "a place of refuge for colored orphans, where they shall be boarded and suitably educated until of an age to be bound or apprenticed," is not exempt from taxation, under 1 Rev. Stat. N. Y 388, § 4, subd. 3, exempting "school houses."—N. Y. Ct. App., March 1, 1887; 12 N. E. Rep. 279.

252. TAXATION—Oath of Assessors—Validity of Sale.— Where the oath of the assessors attached to the assessment roll is such that in no case can perjury be predicated on it, the assessment is void, and all sales for taxes, wherein taxes so assessed are included, are void. *Shattuck v. Bascom*, N. Y. Ct. App., March 8, 1887; 12 N. E. Rep. 283.

253. TAXATION—Void Sale — Improvement—Notice.—— A purchaser of land sold at an invalid tax sale is not entitled to pay for improvements made after service of summons, in a suit by the holder of the permanent title. —*Hilgenberg v. Rhodes*, S. C. Ind., May 24, 1887; 12 N. E. Rep. 149.

254. TAXATION—Void Sale—Lien — Injunction.——The lands of one who has personal property enough to pay his taxes cannot lawfully be sold for the taxes, but the sale vests in the purchaser the State's lien for the taxes, and an injunction will not be granted to prevent the auditor from giving him a deed.—*St. Clair v. McClure*, S. C. Ind., May 24, 1887; 12 N. E. Rep. 134.

255. TAXES—Deed—Title.—— A tax deed will convey no title when the land has never been forfeited to the State.—*Ketchem v. Mullinix*, S. C. Mo., May 16, 1887; 4 S. W. Rep. 447.

256. TRESPASS—Waters—Estoppel.——Where two joint land owners commit a trespass on the lands of another, and one sells out to another, who continues the trespass, a single action cannot be maintained on the joint and several trespasses. One is not estopped from claiming damages for the injury done to his land by a mill dam by the loose parol encouragement he had given to the building of the mill.—*Himes v. Jarrett*, S. C. S. Car., April 28, 1887; 2 S. E. Rep. 393.

257. TRUST—Use of Funds—Right of Beneficiary—Creditor.——Where a trustee uses the trust funds in improving his own estate, and then executes a declaration of trust, the *cestui que trust* can accept the property in place of following the trust funds, and by so doing become owner of the property and retain it against a creditor of the trustee.—*Brazel v. Fair*, S. C. S. Car., April 7, 1887; 2 S. E. Rep. 293.

258. UNIVERSITY FUND — Interest — Statutes.——The act fixing the rate of interest on loans from the university fund at seven per cent., is not repealed by the act of 1879.—*State v. Carr*, S. C. Ind., June 17, 1887; 12 N. E. Rep. 318.

259. VAGRANCY—What Constitutes—Statute.——Construction of California statute defining vagrancy. Idleness and wandering about the streets day and night is sufficient without proving want of visible means of support.—*Ex parte McCarthy*, S. C. Cal., May 31, 1887; 14 Pac. Rep. 96.

260. VENUE—Municipal Officers — Negligence.——An action for damages sustained by the negligence of municipal officers must be brought in the county where they occurred, or on motion transferred thereto.—*Jon-*

v. Town of Statesville, S. C. N. Car., May 9, 1887; 2 S. E. Rep. 346.

261. WATERS — And Water-courses — Roads—Bridges. ——Construction of North Carolina statute respecting mills and mill ponds, etc., and roads and bridges as connected therewith. One who makes such improvements must make bridges where his mill-race or other water-course crosses a previously laid off public road.—*Wadsworth v. Stewart*, S. C. N. Car., May 2, 1887; 2 S. E. Rep. 190.

262. WILL — Bequest — Trust — Remainderman.——A bequest was made in trust for the sole and separate use of a married woman and her children. Her son brought suit against the trustee's executor to recover the trust fund, which had been invested in worthless confederate money. *Held*, that during his mother's life he had no interest in the fund.—*Waller v. Catlett*, S. C. App. Va., May 12, 1887; 2 S. E. Rep. 280.

263. WITNESSES—Competency — Bonds. ——In a suit on a bond executed before 1868, against the administrator of the obligor, such administrator is not competent to prove admissions of his liability by the deceased.—*Smith v. Smith*, S. C. N. Car., May 16, 1887; 2 S. E. Rep. 365.

264. WILLS—Conditional.——Where a party writes on a paper stating that he is going on a journey, and does not feel well, and in case he does not return to do as he there states, such paper cannot be regarded as a will.—*Morrow's Appeal*, S. C. Penn., May 23, 1887; 9 Atl. Rep. 660.

265. WILLS—Conflict of Laws—Construction.——The law of the domicile of the testator governs the interpretation of devises as well as bequests.—*Ford v. Ford*, S. C. Wis., June 1, 1887; 33 N. W. Rep. 188.

266. WILL — Construction. ——A testatrix gave her property to be equally divided between her six children, and provided that if one of the children should die without issue his share should be divided between the others. *Held*, that upon her death each of the children took his share absolutely, and the share of a grandchild who died without issue after her death was not subject to another division, under the will.—*Reans v. Spanu*, S. C. S. Car., April 21, 1887; 2 S. E. Rep. 412.

267. WILL — Construction — Charge on Land.——A testator left four children, two sons and two daughters. One of the sons was of full age, the other children minors. The will divided the land between the two sons, charging the share of the infant son with legacies, and directed the elder son to pay $500 to "my daughter Ida." *Held*, that this was a charge upon the share of land of the eldest son.—*Carter v. Worrell*, S. C. N. Car., May 30, 1887; 2 S. E. Rep. 528.

268. WILL—Equity—Construction — Sale. —— A court of equity has no jurisdiction to construe a will where there are no trusts, and to have the land sold by a commissioner according to the interests of the parties as ascertained.—*Woodlief v. Merritt*, S. C. N. Car., March 28, 1887; 2 S. E. Rep. 350.

269. WILL—Remainder.——A testator devised his estate in trust, the income to be paid to his children. He further provided that, after the death of all the children, the trust should cease and the estate descend to the respective "right heirs" of his children in fee. *Held*, that "right heirs" meant the children of his children.—*Ballentine v. Wood*, N. J. Ct. Ch., April 30, 1887; 9 Atl. Rep. 582.

270. WITNESS—Competency—Agent—Death. —— In a suit by an heir on a policy of fire insurance, the agent of the company who effected the insurance cannot testify as to matters occurring in the life-time of the assured relative to the contract of insurance.—*Ins. Co. of N. A. v. Brim*, S. C. Ind., June 15, 1887; 12 N. E. Rep. 315.

CORRESPONDENCE.

The subjoined letter from a learned and distinguished jurist of the South explains itself. We are pleased to find our views on the subject sustained by such good authority.—[EDITOR CENT. L. J.

To the Editor of the Central Law Journal:

SANFORD, ORANGE CO., FLA., July 6, 1887.

DEAR SIR:—I read with much interest your interesting article in THE CENTRAL LAW JOURNAL of June 24, in relation to Dr. Lloyd's views on Moral Insanity. I agree with you in your legal and physical views of the subject. I am pleased to see that you are sustained by such writers as Rush, Prichard, Wharton and Stilli, J. H. Balfour Browne, author of The Medical Jurisprudence of Insanity, and also Ray, on the same subject, Hammond on Insanity, Shelford on the Law of Lunatics.

In the Journal of Psychological Medicine, volume IV, Dr. Seguin has an article on Idiocy; he takes the view of the existence of moral insanity sustained by the writers above mentioned. In the same volume is an article on Hereditary Influence in Mental Disease, by J. O'Dea. He takes the same view, and so does Prohn, in an article, "Physical and Moral Transmissions," *vide ib* in same journal. Maudsley treats the subject in the same manner, and he is sustained by Dr. Dusin, editor of a dictionary of medicine of great popularity among the learned of the profession, which also contains a paper from Blondford, showing the manifestations of *moral insanity*, and that it may be the precusor, not only of general paralysis, but the sequel of a more severe insanity, from which it results. He expressly says one of the marked features of this insanity is the absence of delusion, but we must not, on this account, argue that the intellect is sound. He shows how moral insanity is often a strong indication of weakened intellect. Other writers say monomania is indicated by some one delusion, the mind remaining clear on other subjects, while some argue that it is an insanity without any delusion.

Dr. Hughes, of St. Louis, has a very learned and practical article in *Medico-Legal Journal*, June, 1884. In *North American Review*, January, 1882, is a very valuable and instructive paper, The Moral Responsibility of the Insane. Moral insanity is very ably discussed, and the application of legal punishment. It is written by Drs. Elwell, Beard, Seguin, Jewell and Folsom. It is a useful paper to the legal profession, as it presents the scientific points and conclusions of law and medical science, and rules of evidence in England, and some of the United States. The subject presents many points of law and evidence which will be alike instructive, interesting and profitable to the legal profession, and also to the medical, as many of its members are often witnesses in criminal trials.

Yours respectfully,

WM. ARCHER COCKE.

QUERIES AND ANSWERS.*

[*Correspondents are requested to draw up their answers in the form in which we print them, and not in the form of letters to the editor. They are also admonished to make their answers as brief as may be.—Ed.*]

QUERY No. 4.

A trust deed in regular form, except it does not state the number of days to advertise in case of default.

What notice should be given, and how? Or will suit have to be brought on note to foreclose deed of trust? Trust deed is on lot in town. Is there any statutory law covering such a case? Please answer fully and cite Missouri authorities. SUBSCRIBER.

QUERIES ANSWERED.

QUERY NO. 16 [*24 Cent. L. J. 335.*]

Husband and wife occupied premises in Missouri as a homestead. The wife was divorced for his misconduct, and was awarded alimony in gross. The only minor child has lived with the wife since the separation. The husband has been in possession since the divorce with no one except a hired servant, whom he married after the divorce. The husband has no other property. Are the premises exempt from execution for the alimony? Cite authorities. M.

Answer. Where a husband has once acquired a homestead he does not lose it by the death or absence of his wife and children, so long as he continues to reside thereon. Beckmann v. Meyer, 75 Mo. 333. A homestead is exempt by law from all subsequently accruing demands, and no exception has been made in the case of executions on judgments for alimony. So the property is exempt. B.

QUERY NO. 17 [*24 Cent. L. J, 335.*]

Under the statutes of Kansas, can the husband of the daughter of a deceased person acquire a tax-deed to deceased's land? F.

Answer An owner of property, or a tenant for life, is bound to pay the taxes during his possession of the property, consequently he is not allowed to acquire a tax-deed on the property for those taxes. A married woman's property in Kansas belongs to her solely and separately (Comp. Laws Kan., 1885, p. 536, § 3347); therefore, her husband can, like any stranger to the title, acquire a tax-deed to any real estate of her deceased father, even though it may descend to her. C.

QUERY NO. 18 [*24 Cent. L. J. 335.*]

A dies intestate, leaving two sons and one daughter. In his life-time he purchased for his sons some stocks. In his ledger account he charges said sons with the amount of the purchases and the assessments on the stocks, and he *pays them the dividends* declared on the stock. In partitioning A's estate among his three children, should the said amounts of stock purchases be considered as advancements or loans or gifts? Please cite authorities. H. C.

Answer. The question of advancements is a matter of intention, but the presumption is, in the absence of other evidence, that a gift to a child by one, who afterward dies intestate, was intended as an advancement, unless it was an inconsiderable sum of money. 2 Williams on Ex. 1502, note *a*, 1503, and cases cited. In many States the question is regulated by statute. The dividends were advancements. Since the testator never delivered the bonds to his sons, we do not deem them to be gifts, loans or advancements, but to belong to the estate of the intestate. The above is the answer given on page 536, to a query almost similarly worded. S. S.

RECENT PUBLICATIONS.

TREATISE ON THE PRINCIPLES OF PLEADING IN CIVIL ACTIONS. By James Gould, LL. D. "It is one of the most honorable, laudable and profitable (useful) things in our law to have the science of well pleading in actions, real and personal."—*Littleton.* "*Ordine placitandi servato servatur et jus.*"—*Coke.* 'The law itself speaketh by good pleading,' 'as if pleading were the living voice of the law itself.' "—*Ib.* Fourth Edition with Notes Adapted to the New York Code of Procedure, by George Gould, one of the Justices of the Supreme Court of the State of New York. Fifth Edition, by Franklin Fiske Heard. Albany: William Gould, Jr. & Co., Law Booksellers and Publishers. 1887.

This is the fifth edition of a standard work on pleading, that is probably so well known to the profession that any words of commendation on our part might fairly be regarded as superfluous. As the first edition of this work was issued as early as 1832, it may easily be understood that the basis of the work is the common law of England on the subject without regard, as the author explains in his preface to any of the peculiarities of law on the subject in any of the States, except a few references "to those which exist in the law of my native State." In the fourth edition, Judge George Gould of the Supreme Court of New York, added many notes adapted to the Code of Procedure of that State. To the fifth (present) edition, the editor has, "from the abundant material relating to the law of pleading, which has accumulated within the last half century, made selections in illustration of the text which are presented in the Addenda." "The text," he adds, "remains intact." The object of the original work, as Judge Gould explains in his preface to the first edition, "is simply to render the doctrines of pleading more intelligible and more easy of attainment than many have supposed them to be, by showing them to be *reasonable.*" It was very desirable in 1832 to learn, not only what the law *is*, but also the *reason* why it is so, and in 1887 it is not a whit less desirable. To those who wish to understand the *rationale* of the law of pleading, we very cordially commend this work.

JETSAM AND FLOTSAM.

A SENSIBLE AMENDMENT.—Once in a great while an English judge does say a really good thing, and the following is one of the best: "There is a story current about a supposed meeting of the judges to consider a jubilee address to the queen, which is an obvious adaption to that event of an incident which we believe really occurred with reference to another matter. When the address to the queen at the opening of the royal courts was under consideration by the judges, one very eminent judge of appeal objected to the phrase 'conscious as we are of our own shortcomings.' 'I am not conscious of my shortcomings,' he said, 'and if I were I should not be so foolish as to say so; whereupon a learned lord justice blandly observed, 'suppose we say 'conscious as we are of *each other's shortcomings.*' "—*Albany Law Journal.*

This sort of consciousness is rather characteristic of the judicial mind. There is extant an old set of American Reports published when the century was "in its teens," in which it appears that in nine out of every ten cases reported some one of the three judges dissented from the opinion of the court. These learned gentlemen were abundantly "conscious of each other's shortcomings."—[ED. CENT. L. J.]